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IN THE

Supreme Court of the United States

OCTOBER TERM—1969

No. 1012

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J., a corporation, etc., and CASLOV NIKITOVIC (and thirteen others),

Petitioners,

vs.

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J. (DIOCESE FOR EASTERN STATES OF AMERICA AND CANADA), an unincorporated association, and LOUIS VASITY, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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No.

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J., a corporation, etc., and CASLOV NIKITOVIC (and thirteen others),

Petitioners,

vs.

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J. (DIOCESE FOR EASTERN STATES OF AMERICA AND CANADA), an unincorporated association, and LOUIS VASITY, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of New Jersey entered in the above entitled case on September 30, 1969.

Citations to Opinions Below

1. Opinion of the Superior Court of New Jersey, Chancery Division (Herbert, J.), filed October 25, 1967 has not been officially reported. It is set forth in Appendix B, *infra*, p. 3a.

2. Opinion of the Superior Court of New Jersey, Appellate Division, filed June 13, 1969, reported in 106 N. J. Super. 22 (App. Div. 1969). This opinion is presented in Appendix C, *infra*, p. 28a.

3. Order of the Supreme Court of New Jersey denying petition for certification. This order is reported in 54 N. J. 516 (1969). It is set forth in Appendix D, *infra*, p. 33a.

Jurisdiction

The Supreme Court of the State of New Jersey, on September 30, 1969, dismissed petitioners' appeal to that court, Appendix D, *infra*, p. 33a.

The jurisdiction of this Court is invoked under 28 U.S.C.A., Sec. 1257 (3).

Question Presented

Does a decision of a Civil Court in denying to certain church members the right to worship in their church because such members are deemed schismatic, where there is no ecclesiastical decision by any church authority that said members are schismatic, violate Amendment I and Amendment XIV, Section 1, of the Constitution of the United States, when such action has the effect of making civil authorities the arbiter of purely ecclesiastical questions?

Constitutional Provisions

The constitutional provisions which petitioners contend have been violated by the judgment of the Superior Court of New Jersey, Chancery Division, and affirmed by the Superior Court of New Jersey, Appellate Division, and the Supreme Court of New Jersey, are the following:

Amendment I of the Constitution of the United States:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

Amendment XIV of the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

This action arose out of a controversy which developed in the Serbian Eastern Orthodox Church in 1963. In May, 1963, the Holy Assembly of Bishops in Belgrade, Yugoslavia, attempted to abolish the Serbian Orthodox Diocese for the United States and Canada (hereinafter sometimes called the American-Canadian diocese). They also purported to replace the American-Canadian Diocese with

three new dioceses, each of which was to be presided over by a newly appointed Bishop. The Holy Assembly of Bishops also purported to suspend the Bishop of the American-Canadian Diocese, Bishop Dionisije, and subsequently defrocked him. These actions caused division of opinion in most, if not all, of the Serbian communities in the United States and Canada, resulting in litigation in sixteen communities in seven jurisdictions. See Appendix H, *infra*, p. 125a.

The petitioners were the duly elected trustees of a New Jersey nonprofit corporation, The Serbian Eastern Orthodox Congregation of St. George, Elizabeth, N. J. (hereinafter sometimes referred to as the Corporation). The New Jersey Corporation owned property in Elizabeth, New Jersey, upon which stands a church building.

In June, 1965, the petitioners, as the trustees of the New Jersey Corporation, commenced an action against the respondents, seeking to enjoin the respondents from using the corporate name and printing a newspaper with the same name and format as the corporate newspaper. Respondents filed a countersuit alleging that they were the rightful holders of the corporate property, averring *inter alia* that petitioners were schismatic followers of the defrocked Bishop, Bishop Dionisije.

The suit centered around the actions of the petitioners or their predecessors during the months of June through November, 1963. The petitioners objected to the attempted abolition of the American-Canadian Diocese. In June, 1963, the corporate membership passed a resolution rejecting the attempted abolition of the Diocese. They maintained that this attempted abolition constituted a change of the Diocesan constitution which could be validly accomplished only with the consent of the Diocesan Legis-

lature (called a Sabor). The petitioners relied upon Article 23, subparagraph 8, of the Diocesan Constitution. See Appendix F, *infra*, p. 42a (at p. 54a).

The respondents maintained that the petitioners' refusal to accept the abolition of the American-Canadian Diocese, and their failure to repudiate the Diocesan Bishop, constituted a schism within a hierarchical church system. Respondents contended that the petitioners, therefore, had breached the trust pursuant to which they controlled the New Jersey corporation and, therefore, were no longer entitled to control of that Corporation.

Petitioners also contended that the Diocese could not be abolished without Diocesan consent. They denied that they had sworn allegiance to Bishop Dionisije or any other person. They contended their differences with respondents centered around the status of the diocese within the Serbian Orthodox Church. Petitioners maintained that the church was not a pure hierarchical church system, but, rather, was one in which local church property was retained by the local church authorities, the Board of Trustees. Petitioners denied that they engaged in any act which would characterize them as schismatics.

The trial of the case commended on January 17, 1967 in the Superior Court of New Jersey, Chancery Division. At the conclusion of the trial, the Court rendered a judgment declaring that the New Jersey Corporation was affiliated with the Diocese supported by the respondents. The judgment vacated all corporate offices held by the petitioners and ordered the petitioners to turn over the corporate assets to the respondents. The Court's opinion, pursuant to which the judgment was filed, declared that the petitioners were schismatic.

Petitioners appealed the judgment to the Superior Court of New Jersey, Appellate Division (hereinafter sometimes referred to as the Appellate Division). The Appellate Division affirmed the trial court's judgment. The opinion of the Appellate Division stated in part:

> "The trial judge implicitly determined and we find that the proofs support that conclusion that the Appellants here qualify as followers of Bishop Dionisije who, thus, became *schismatics.*" (Emphasis added.)

The petitioners appealed the judgment to the Supreme Court of New Jersey, contending, *inter alia,* that the judgment effectively deprived them of property without due process of law, inasmuch as it deprived them of the right to worship guaranteed under the First and Fourteenth Amendments to the United States Constitution. The Supreme Court of New Jersey denied petitioners' appeal.

It should be noted that there never has been any determination by any church authority, the validity of which is recognized by the law of this case, holding that petitioners were schismatic. The opinion of the Appellate Division, *infra,* Appendix C, p. 28a, refers to a Declaratory Hierarchical Act. This Declaratory Hierarchical Act was a letter promulgated by the so-called newly appointed Bishops of the new dioceses, Appendix E, p. 34a. This letter was issued on November 24, 1966, long after this litigation had commenced. Moreover, the letter was not even directed to the petitioners and was not promulgated pursuant to any trial or hearing concerning the petitioners. Furthermore, the so-called Bishops had no authority to issue said letter, since the power of excommunication is reserved to the Diocesan Court under the provisions of the Serbian Church Constitution. See Appendix G, p. 134a.

Presentation of the Federal Question

The judgment in the Superior Court, Chancery Division, divesting petitioners of the corporate property and vacating petitioners' corporate offices because petitioners were schismatics, raised the federal question, to wit:

> Does the judgment of the Superior Court of New Jersey contravene the provisions of the First and Fourteenth Amendments of the United States Constitution, insofar as it deprives petitioners of their right to worship, employs civil sanctions to decide ecclesiastical questions and enforce same, and, consequently, breaches the wall between separation of church and state?

Petitioners first opportunity to raise the question was in their appeal to the Superior Court, Appellate Division. Petitioners urged in their reply brief, that the question of schism is a matter without the jurisdiction of a civil Court. The Appellate Division, recognized the federal question, but rejected it.

This question was also urged upon the Supreme Court of New Jersey. Petitioners contend that they had the right to appeal to the Supreme Court of New Jersey pursuant to N. J. Revised Rule 1:2-1 inasmuch as the case concerned a matter involving a substantial question arising out of the Constitution of the United States.

N. J. Revised Rule 1:2-1 provides in part as follows:

> Appeals taken in this Court from final judgments (a) and causes determined by the Appellate Division of the Superior Court involving a question under the Constitution of the United States or this state . . .

The Supreme Court of New Jersey refused to hear the case.

REASONS FOR GRANTING THE WRIT

POINT I

The subject of Civil Court intervention in church affairs is currently the subject of much litigation and public interest.

In 1969, the Supreme Court of the United States decided *Presbyterian Church in the United States, etc.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U. S. 440, 89 Sup. Ct. 601, 21 L. Ed. 2nd 658 (1969). This case restated the principle of law that a Civil Court has no jurisdiction to decide ecclesiastical questions. *Watson* v. *Jones,* 13 Wall. 679, 80 U. S. 679, 20 L. Ed. 666 (1872). The case of *Presbyterian Church in the U. S. etc.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra,* pointed out that this principle of law was protected by the Federal Constitution.

The instant case demonstrates, however, that state courts have failed to grasp the significance of the decision of *Presbyterian Church in the United States, etc.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* The Courts of New Jersey have continued to decide cases based on their determination of who is a lawful member of the church and who is not a lawful member of the church. The Supreme Court of New Jersey has restrictively interpreted *Presbyterian Church* v. *Hull Church, supra.* It has limited the decision to a restatement of one aspect of *Watson* v. *Jones, supra.* The New Jersey Courts interpret these cases to prohibit a Civil Court from reviewing the decision of a higher judicatory in a hierarchical church system. The New Jersey Courts do not see the United States Supreme Court de-

cisions in their broader scope, namely that of prohibiting Civil Courts from addressing themselves to the question of ecclesiastical schism.

Therefore, the case at bar has substantial public considerations which transcend the interest of the parties to this litigation. This case demonstrates a need for further elucidation of the Constitutional interdiction of Civil Courts in strictly ecclesiastical questions.

Appendix H, *infra* p. 125a, sets forth a list of the litigation involving Serbian Church congregations in various jurisdictions. This indicates the extent of litigation in the Serbian Church System alone. In addition, the case of *Berkaw* v. *Mayflower Congregational Church,* 170 N. W. 2nd 905 (Ct. of App. Mich. 1969) and *Maryland and Virginia Eldership* v. *Church of God,* 241 A. 2d 690 (Md. Ct. of Appeals 1968), and *Presbyterian Church* v. *Hull Church, supra,* and *Mitchell et als.* v. *Albanian Orthodox Diocese in America, Inc.,* 244 N. E. 2d 276 (Sup. Jud. Ct. Mass. 1969) are a few examples of other church litigation in this area.

POINT II

The judgment of the Superior Court of New Jersey, Appellate Division, is violative of the petitioners' rights which are protected by the First and Fourteenth Amendments to the Constitution of the United States and the judgment is contrary to the decisions of the Supreme Court of the United States.

The Supreme Court of the United States in deciding the case of *Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra,* stated:

> "The question presented is whether restraints of the First Amendment as applied to the States through the 14th Amendment permit a Civil Court to award church property on the basis of the interpretation and significance of the Civil Court assigned to aspects of Chruch Doctrine."

The Court answered this question in the negative, and pointed out, through the opinion of Mr. Justice Brennan:

> "There are neutral principles of law developed for use in all property disputes which can be applied without establishing churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by Civil Courts of controversies over religious doctrine and practice . . . the Amendment therefore commands Civil Courts to decide church property disputes without resolving the underlying controveries over religious doctrine."

In the matter *sub judice* the New Jersey Superior Court violated the Constitutional limitation. The case was decided on the question of who was and who was not in schism in the Serbian Orthodox Church. This is solely an ecclesiastical question. It is not a neutral principle of law which can be applied in all property disputes. Such a decision necessarily entails the resolution of a question of religious doctrine or practice. Therefore it falls within the ambit of the Constitutional interdiction.

A similar case decided by the Supreme Court of the United States was *Serbian Orthodox Congregation of St. Demetrius, Akron, Ohio* v. *Keleman,* —— U. S. ——, 21 L. ed. 750, 89 S. Ct. —— (1968). This case concerned the Serbian Eastern Orthodox Congregation in Akron, Ohio.

The Ohio Courts had held that the church members who followed Bishop Dionisije were schismatic. The United States Supreme Court vacated the Ohio Court judgment and remanded the case to Ohio for consideration in the light of *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* Petitioners submit that the case of *Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio* v. *Keleman* is virtualy identical with the matter *sub judice.* Therefore, the petitioners contend that this case should be remanded to the Supreme Court of New Jersey for further consideration in the light of *Presbyterian Church* v. *Mary Elizabeth Blue Hull Church, supra.* Both cases insolve Serbian Church congregations. In both cases the majority of the members of the respective congregations had been deemed schismatic by civil courts because they ostensibly followed Bishop Dionisije. In both cases there was never any determination by an ecclesiastical authority that these persons (Petitioners) were schismatic. The only difference between the Ohio case and the New Jersey case is the New Jersey Appellate Division's reference to the Declartory Hierarchical Act pursuant to which the followers of Bishop Dionisije were stated to have been excommunicated, see Appendix E, p. 36a. This Declaratory Hierarchical Act is nothing more than a letter from the Bishops who were competing with Dionisije for control of the American Diocese. This subject, Control of the Diocese, is now in litigation in the State of Illinois in the matter of *Serbian Eastern Orthodox Diocese for the United States and Canada* v. *Ocokoljich,* 72 Ill. App. 2nd 444, 219 N. E. 2nd 343, see Appendix H, p. 126a. There is no known authority whence these Bishops derive the right to excommunicate anyone; excommunication may be effected only by the judgment of an ecclesiastical court. In addition, there has been no determination

that the petitioners fall under the classification of the persons described in this Declaratory Hierarchical Act. The only Court to so classify the petitioners was the Superior Court of New Jersey.

The Superior Court of New Jersey has entered into an area where it does not have power. Mr. Justice Douglass, in the case of *United States* v. *Ballad*, 322 U. S. —— (1943) enunciated the controlling principles:

> ". . . the constitutional guarantee of religious freedom does not select any one group or any one type of religion for preferred treatment but puts them all in that position."

Further, at page 88:

> ". . . we conclude that the District Court, ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents."

Mr. Justice Douglas went on to quote from *Watson* v. *Jones, supra*:

> "The law knows no heresy and is committed to the support of no dogma, the establishment of no sect."

Petitioner urges that what the New Jersey Courts have done is regard themselves as competent to "know heresy" in that they decided that certain acts were schismatic although no such decision had been made prior to that time by church authority. What the New Jersey Courts did in effect was to "select one group for preferred treatment", although it has long been the law of the United States that civil courts may not do so.

In *Everson* v. *Board of Education,* 330 U. S. 1 (1947), Mr. Justice Black, speaking for the majority at p. 15, enunciated the law controlling this dispute and the law which should result in this Court's granting petitioners' request for a Writ:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can openly or secretly participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between church and State.'"

Petitioners believe that the State has participated in the affairs of a religious organization by its act in characterizing certain parties to an internal church dispute as schismatic, and certainly by its act in ordering that the faction in control of the St. George Church has no right to worship as a group in the St. George Church. See Appendix A, p. 2a and Appendix B, p. 27a.

The following language from *Sims* v. *Green,* 160 F. 2nd 512, 515 ( ), is an apt summation of the First Amendment limitations applicable herein:

> "The power of a civil court * * * in respect to disputes between warring church factions is limited to the enforcement of the judgment or order of the religious tribunal or tribunal judicatory if the order or judgment of the tribunal or judicatory has been reached in accordance with the law of the church."

CONCLUSION

For the foregoing reasons, we submit the question presented by this appeal as to the power of a civil court to intervene in a religious dispute and make its own determination as to whether certain individuals, parties to that dispute, have departed from the practice of their religion, is substantial, and raises an issue of public importance which is of sufficient weight as to merit the attention of this Court. We urge this Court to note probable jurisdiction and to grant this Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

(Judgment of Superior Court of New Jersey in Consolidated Actions C-2874-64 and C-3603-64)

This matter having been brought on by Notice of Motion to settle the form of Judgment before Judge Ward Herbert by Paul R. Williams, Jr., attorney for the plaintiffs in the case having Docket Number C 3603-64 and attorney for the defendants in the case having Docket Number C 2874-64 and in the presence of Daniel J. Russell, attorney for plaintiffs in the case having Docket Number C 2874-64 and attorney for the defendants in the case having Docket Number C 2603-64 and the Court having listened to the arguments of counsel and with reference to the form of this Judgment and the Court having determined that the form of said Judgment should be as follows:

It is on this 20th day of November, 1967, Ordered and Adjudged that the Serbian Eastern Orthodox Congregation of St. George, Elizabeth, New Jersey, a religious corporation of the State of New Jersey is an integral part of the Mid-Eastern American Canadian Diocese of the Serbian Orthodox Patriarchate, created by the decision by the Holy Assembly of Bishops of the Serbian Orthodox Patriarchate in Yugoslavia on May 10, 1963; and

It is further Ordered and Adjudged, that the aforementioned incorporated congregation of the Serbian Eastern Orthodox Congregation of St. George of Elizabeth, New Jersey is not associated, affiliated or connected with the Diocese headed by Bishop Dionisije, commonly referred to as the Serbian Eastern Orthodox Diocese for the United States and Canada; and

It is further Ordered that the amendments to Article 9 and 10 of the by-laws of the aforementioned congregation adopted February 25, 1965 in which membership in said congregation is contingent upon supporting the aforementioned Diocese headed by Bishop Dionisije is void and of no force and effect; and

It is further Ordered that all offices held by the defendants in the case having docket number C 3603-64 are declared vacant; and

Appendix A

It is further Ordered that the plaintiffs in the case having docket number C 3603-64 or their nominees who are recognized by the Mid-Eastern American Canadian Diocese are entitled to act in behalf of the church congregation and for that purpose the defendants in the case having docket number C 3603-64 are ordered to turn over at once to the plaintiffs or their nominees all books, records and other incidents of their respective offices in order that the church congregation may be placed solely under the control of members of the church congregation who recognize and adhere to the Mid-Eastern American Canadian Diocese, its Bishop, and the Serbian Orthodox Patriarchate and

It is further ordered that the defendants in the case having docket number C 3603-64 and all those person who are or may become affiliated with said defendants are enjoined from using the name "St. George", from holding themselves out as representing the Serbian Eastern Orthodox Congregation of St. George, Elizabeth, New Jersey and from using the name of the news letter commonly known as "The Bell" of the congregation and provided, however, that nothing contained in this Judgment shall be construed to exclude any person from said congregation who is qualified from a religious point of view to become a member and who is willing to accept the jurisdiction of the American Canadian Diocese, its Bishop and the Serbian Orthodox Patriarchate; and

It is further Ordered that the Complaint having docket number of C 2874-64 is hereby dismissed; and

It is further Ordered that the Court will retain jurisdiction in order that any problems can be brought before the Court which may arise or be disclosed in connection with restoring the use of the material assets of the congregation to the persons and purposes for which those assets have been dedicated.

WARD J. HERBERT
J.S.C.

APPENDIX B

(Opinion of Herbert, J. S. C. (After Trial of Consolidated Actions C-2874-64 and C-3603-64))

Decided: October 20, 1967

Messrs. Sauer & Boyle and *Mr. Daniel J. Russell,* attorneys for plaintiffs in C 2874-64 and for defendants in C 3603-64 (*Mr. Ivan Michaelson Czap* of Philadelphia, assisting)

Mr. Paul R. Williams, Jr., attorney for plaintiffs in C 3603-64 and for defendants in C 2874-64 (*Mr. Theophile D. Kraehel,* assisting)

HERBERT, J.S.C.

These actions have been consolidated. Taken together, they really represent a single controversy between two groups for control of the Serbian Eastern Orthodox Congregation of St. George, Elizabeth, N. J., its real and personal property, its name and corporate function and the established name of the church newspaper. Dissension within the congregation centers about the status of Dionisije Milivojevich, who until May 10, 1963, was without question the diocesan bishop of the Diocese of the United States and Canada. Though the named plaintiff in case No. C 2874-64 is the parish corporation, the individuals who are responsible for pressing that case—some of whom are named as defendants in case No. C 3603-64—are adherents of Bishop Dionisije. They take the position that the Diocese of the United States and Canada still exists and that Dionisije is its presiding bishop. For convenience I will refer to them as the Dionisije group. The individual plaintiffs in case No. C 3603-64 accept as valid action which was taken in Belgrade, Yugoslavia on May 10, 1963

which by its terms created three new dioceses to replace the single Diocese of the United States and Canada. Among these three was a Mid-Eastern American Canadian Diocese with Detroit designated as its see. For convenience I will refer to this group of litigants as the Belgrade group.

The Congregation of St. George was incorporated under the laws of New Jersey on June 29, 1963. The original certificate of incorporation made no mention of affiliations, but by an amendment dated September 20, 1954 it was expressly provided that the congregation "shall become, and shall be a constituent part of the Serbian Eastern Orthodox Diocese in the United States and Canada." St. George's did become a part of the diocese and that relationship was continuing when the action of May 10, 1963 was taken. Formal recognition of the relationship is found in Chapter I, Article 5 of the by-laws of the congregation, reading as follows:

> "The Serbian Eastern Orthodox Congregation of St. George is a constituent part of the Serbian Eastern Orthodox Diocese in the United States and Canada. As such, it is subject to the provisions of the Constitution of the Serbian Orthodox Diocese in the United States and Canada, of the ecclesiastical canons, and other statutes, regulations and decrees of the diocesan authorities and diocesan bishop. At the same time, this congregation is subject to the Law of the State of New Jersey and of the federal laws of the United States of America."

The Diocese of the Serbian Orthodox Church for the United States and Canada was formed in or about 1927.

Appendix B

A written constitution for it was approved by the Holy Bishop's Synod of the Serbian Orthodox Church in December, 1928 in accordance with authorization of the Holy Bishop's Assembly of the Serbian Orthodox Church. The First Part of the diocesan constitution contains the following articles which bear upon relationship between the diocese and the Serbian Orthodox Patriarchate:

"Art. 1

"The Serbian Orthodox Diocese in the Northern States of America and Canada is considered ecclesiastically-judically as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia and enjoys all the benefits which originate therefrom.

"Art. 2

"All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for the Serbian Orthodox Diocese in the United States of North America and Canada, with the exception of specific cases which must be formulated with regard to local circumstances in accordance with the ecclesiastical and judicial principles.

"Art. 3

"The jurisdiction of the Serbian Orthodox Diocese in the United States of America and Canada with its Diocesan See in Chicago, includes the entire political territory of the United States of America and Canada, which as such by its geographical location en-

joys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficieincies, through its organs, but in accordance with the laws of this constitution and in agreement with the laws of the United States of America and Canada."

• • •

"Art. 9

"The Bishop of the Serbian Orthodox Diocese in the United States of America and Canada is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate."

• • •

"Art. 12

"The Diocesan Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patriarchate, the Archbishop of Ipek, Metropolitan of Belgrade-Karlovac and Serbian Patriarch, whom he mentions in all services. He shall not make any changes or innovations in the established order and work of the church without prior agreement with him.

"Accordingly, the Diocesan Bishop shall submit to the Serbian Patriarch for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontifical Synod, as the highest executive church authority.

Appendix B

> "Should the Diocesan Bishop find by his own assurance, that decisions rendered by any church authority or organ are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interest of the church, he shall halt the execution of such decision and submit the matter for rediscussion and redecision. If he again is not in accord with redecision as reconsidered he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod."

The position of a congregation, such as that of St. George, in the diocese is dealt with by Article 4 of the First Part of the constitution, which reads as follows:

> "The Serbian Orthodox Diocese in the United States of America and Canada is comprised of Serbian Orthodox Church - school Congregations - Parishes, churches, monasteries, archpresbyterates, established within the territory of the above mentioned states and which fall under the spiritual, executive, ecclesiastical-judicial and controlling authority of the diocesan organs (Bishop and Diocesan Council). Therefore, every Serbian Orthodox Church-school Congregation, church, monastery, and archpresbyterate already existing or which shall be established in the above mentioned territories must be in ecclesiastical-canonical bond with this Diocese and recognize its authority and power."

The Serbian Orthodox Church also has a written constitution—a very long one—which was adopted by the Holy Assembly of Bishops meeting in Belgrade in May of 1947. Articles 12 and 13 of that constitution read as follows:

Appendix B

"ARTICLE 12.

"The Serbian Orthodox Church is episcopal. Its main administrative division is composed of dioceses, both in regard to church hierarchical and church administrative aspects.

"ARTICLE 13.

"At the head of the Serbian Orthodox Church is the Serbian Patriarch, as its chief ruler. The title of the Patriarch is: The Archbishop of Pec, Metropolitan of Belgrad-Karlovci and the Serbian Patriarch.

"At the head of each diocese there is the diocesan bishop as its direct ruler. He is, according to the church canonical regulations, chief representative and guiding leader of all church spiritual life and church order in the diocese and he rules the diocese assisted by his clergy and laymen."

Article 14 lists twenty-four dioceses which are geographically located in Yugoslavia or in the general vicinity of that country. Prior to May 1963 the provision for a diocese in the western hemisphere was found in the following portion of Article 15:

"In addition to already mentioned dioceses in the previous article, under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect, also belong the following dioceses outside of the country:

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"1. The Serbian Orthodox Church in the United States of America and Canada, with its seat in Chicago or in the monastery of St. Sava, at Libertyville, Illinois; . . ."

As to changes in any diocese, Article 16 is pertinent and reads:

"Decisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses, and establishing or eliminating of position of vicar bishops, is decided upon by the Holy Council of Bishops, in agreement with the Patriarchal Council."

I come now to the change or, as the Dionisije faction would say, purported change in the American Canadian Diocese. A communication of the Serbian Patriarch dated May 17, 1963 was sent to the United States. The text of this was, in part, as follows:

"The Holy Council of Bishops of the Serbian Orthodox Church, in its session of May 10th, 1963, under No. 20 and 21 / Min. 77 passed the following decision:

" 'Upon the request of the Church-Peoples Council of the American Canadian Diocese and American-Canadian Bishop No. 115 of Feb. 13, 1962 and No. 127 of May 25, 1962, that, in the view of largeness and spaciousness of this Diocese, is necessary to elect for this Church territory more bishops, the Holy Council of Bishops, according to Sec. 16 of the Constitution of the Serbian Orthodox Church, instead of the present American Canadian Diocese has formed three Dioceses:

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"'1. The Mid-Western American Diocese, with St. Sava Monastery at Libertyville as its center, and His Grace Bishop Dionisije as its Bishop,

"'2. The Western American Diocese, Los Angeles as its see and

"'3. Mid-Eastern American Canadian Diocese, with the see in Detroit.'"

* * *

"'As soon as the newly formed Dioceses obtain their Bishops, the necessary Diocesan bodies and organs will be formed immediately.

"'The final delimitation of the newly organized Dioceses, the adjustment of the existing Church By-Laws (Ustav) to the newly created situation and all other questions pertaining to the church organization of those Dioceses, will be studied by the juridical Bishops and Church-Peoples' Council and by the Holy Assembly of Bishops will pass the final judgment on these proposals'."

Parenthetically it should be said that the constitution of the Serbian Orthodox Church as well as other papers which are in evidence, all of which are in translation, sometimes refer to the "Holy Assembly" of Bishops and sometimes to the "Holy Council" of Bishops; I am satisfied that the terms "Assembly" and "Council" have been used interchangeably to designate one and the same body.

Bishop Dionisije lost no time in communicating to St. George's and presumably to other parishes, his opposition to subdividing the diocese of the United States and Cana-

da. This is reflected in a letter sent to Bishop Dionisije by a group of members of the Congregation of St. George. The letter is dated June 9, 1963 and in the translation furnished to me reads:

"His Grace

American-Canadian Bishop Dionisije and
Diocesan Council of the Serbian Orthodox Church
for America and Canada
Libertyville, Illinois

"Most Reverend Bishop,

Dear and respected brethren,

"After having listened to both epistles of His Grace Bishop read from the Altar Doors of our church by our priest Father Ilija Dajkovich, and realizing the danger in which the unity and survival of our free Church Diocese in America and Canada are brought, we, as Christians and Serbs, are deeply concerned.

"As a result of our concern for our Church and Diocese, we have decided to give the full support to our free Diocese, and to help to revoke the decision of the Holy Synod about the dismemberment of our Diocese. We consider that the Holy Assembly of Bishops in our enslaved old country have not the free hands in their decisions; therefore, we are convinced that they are forced to work under the pressure of the Communist Government and Party: we also consider that this dismemberment of our Diocese is only profitable to the Communists in Yugoslavia, who desire, in this way, to control the only free Serbian Church in the world.

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"We are determinately against such a decision made without any consultation with the Serbian people in America and Canada and we ask that that decision should be revoked and not put in power.

"Devoted to our holy Church and to the sublime Serbian ideals: . . ."

[Here follow more than seventy signatures.]

Some members of the congregation were not willing to adopt the position stated in this letter. A complete break between the two groups was, however, some time in coming. Then in August, 1964 Bishop Stefan, who had been named diocesan bishop for the Mid-Eastern American Canadian Diocese, came to Elizabeth. He met with fifteen or sixteen members of the congregation who had not previously cemented their allegiance to Bishop Dionisije and they were either persuaded that the new diocese had been legally created and Dionisije was no longer entitled to recognition, or their beliefs to that effect were confirmed. Promptly thereafter the members of St. George who had met with Bishop Stefan received a letter, written in the name of the congregation, informing them that they were expelled from membership by reason of the meeting and notifying them that they had no right to attend business meetings of the congregation or to attend its social functions. Since then the Belgrade group and its adherents have been carrying on an existence independent of the Dionisije group. The Belgrade group has not formed its own religious corporation under New Jersey law, but it has been recognized by the diocesan bishop as a member congregation of the Mid-Eastern American Canadian Diocese, it holds religious services in church buildings owned

by other denominations and it has carried on the ordinary functions of an Eastern Serbian Orthodox congregation. In all these activities it has used the name St. George.

It was not until February 21, 1965 that the Dionisije group, purporting to act as the incorporated congregation of St. George, voted to amend Articles 9 and 10 of the congregation's by-laws to include the following:

> "Article 9
>
> ". . . persons not recognizing the jurisdiction of the Serbian Orthodox Diocese for the United States and Canada, having its seat in Libertyville, Illinois, cannot be members of the Congregation of Saint George in Elizabeth."
>
> "Article 10
>
> "A member who does not pay his membership dues for two years loses all the rights belonging to members. If he wishes to become again a member, he must file with the Executive Committee a new application to be admitted to membership. The Executive Committee can, at its discretion, admit such an applicant to membership, provided that the latter satisfies the other requirements set forth in Article 9. In such a case the applicant must pay all the membership dues he failed to pay."

The minutes of the meeting at which these amendments were voted upon do not show how many persons were present and voting. However, the Dionisije group claimed to have on September 15, 1967, 156 members in good standing. At the time of trial the Belgrade group claimed 78 members, but concededly not all of these were paid up

as to dues. In spite of disputes concerning the accuracy of the respective totals, I am satisfied that the Dionisije group has a clear majority. The effect of majority power is reflected in the actions taken to expel the Belgrade group. It is also reflected in the continued control by the Dionisije group of the church edifice located at 654-58 South Broad Street, Elizabeth, the personal property contained in the church, the bank account or accounts of the church corporation, as well as possession and control of a partially completed recreation hall on land which I believe is adjacent to the church building.

The complaint of the Dionisije group in docket No. C 2874-64 demands an injunction restraining the Belgrade group from using the name "Serbian Eastern Orthodox Congregation of St. George, Elizabeth, N. J." and from publishing a newspaper under the name and in the form used by the congregation before the schism occurred. It may also be some indication of the strength of feeling which has been aroused by this unfortunate controversy that the Dionisije group also demand punitive damages of $25,000 from each of the individual defendants in case No. C 2874-64 and punitive damages of $100,000 from the defendants as an association. I think these demands for punitive damages are an absurdity and I will give them no further attention. I would make the same comment about them if they had been asserted by the Belgrade group against the Dionisije group. That the members of both groups consider themselves sincerely devoted to the religious beliefs and teachings of the Serbian Orthodox Church I have no doubt, even though the controversy between them has already had a destructive effect upon what was formerly the congregation of all of them and obviously—no matter what the outcome here—will continue to have a destructive effect in the future.

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The Belgrade group also sue in the name of the incorporated congregation of St. George as well as in the names of sixteen individual plaintiffs. Their complaint closes with a long series of demands. These aim at voiding the expulsion from St. George of the individual plaintiffs and their adherents and restoration of St. George to the position of a congregation within the Serbian Orthodox Patriarchate and its Mid-Eastern American Canadian Diocese. They do not question the rights of members of the Dionisije faction to leave the congregation and form a new church but they demand relief which will require those who have left to surrender control of the church corporation and give up use of its name and all of its property. There are also demands for an accounting and damages.

The course of events at Elizabeth which split the Congregation of St. George has been already described. Significant developments took place at higher levels, too. On May 10, 1963 the Holy Assembly of Bishops ordered the Holy Synod to proceed with charges against Bishop Dionisije. These charges had been some time in reaching the point of prosecution, had nothing to do with the subsequent refusal to accept the subdivision of the single American-Canadian diocese and had originated in the diocese rather than in Yugoslavia. At the same time Bishop Dionisije was suspended from his episcopal duties pending a disposition of the charges. Thereafter the investigation and prosecution of charges proceeded, with the final result that Dionisije was stripped of all clerical rank and returned to lay status. In spite of the pending charges and the suspension from episcopal duties, Dionisije continued to act as though still diocesan bishop of the American-Canadian diocese. He presided over what purported to be meet-

ings of the Diocesan Assembly, a body consisting (according to the constitution of the American-Canadian diocese) of lay delegates from the congregations and clergy. At one session this body adopted a resolution declaring unlawful the subdivision of the diocese into three parts. When the Holy Bishop's Synod of the Serbian Orthodox Church responded by denouncing as illegal the assembly over which Dionisije had presided, another assembly was held declaring the American-Canadian diocese autonomous and free of control of the Patriarchate.

These events suggest conflicts on a wide scale, and in fact there have been such conflicts.

This litigation is only a piece of a pattern which has developed since the Holy Assembly of Bishops took action to subdivide the Diocese of the United States and Canada. Conflicts within particular congregations, like the one prevailing within the Congregation of St. George, have ended in the courts of Ohio, Indiana and Ontario. The courts of Illinois are still concerned with litigation over the effect, if any, of the subdivision upon an Illinois religious corporation named "Serbian Eastern Orthodox Diocese of the United States of America and Canada." There has been made available to me opinions in these several cases. A brief examination of each seems appropriate.

Mirkovich, et al. v. *Bozanich, et al.*, was decided in the Supreme Court of Ontario on April 12, 1965 by Mr. Justice Wilson sitting without a jury. The plaintiffs had taken the position that the action at Belgrade on May 10, 1963 was valid and should be accepted by the congregation. The defendants were followers of Bishop Dionisije. Both groups claimed the right to ownership and control of the property of the congregation. Pending the suit an arrangement was made whereby the two groups at separate hours could use the church building for religious services. After reviewing the constitution of the Serbian Orthodox Church and the constitution of the single diocese of the United States and Canada the court found in favor of the

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Ralich, et al. v. *Vukelich, et al.*, was decided on June 29, 1966 by the Court of Appeals for the Ninth Judicial District of Ohio. The plaintiffs who were a minority group within the Serbian Orthodox Congregation located at Lorain, Ohio, saw fit after the subdivision ordinance of May 10, 1963 to continue as followers of Bishop Dionisije. They complained to the court that they had been unlawfully expelled from membership in the congregation and sought injunctive relief. However, such relief was denied on the ground, among others, that the plaintiffs by refusing to adhere to the new diocese and its bishop had withdrawn from the congregation.

Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio v. *Keleman, et al.*, was decided by the Court of Common Pleas of Summit County, Ohio in 1966. That was a suit by the Dionisije faction of the congregation to prevent the Belgrade faction from using the congregation's name. The claim by the Belgrade faction was that it had the right to use the congregation's property as well as its name. The court held in favor of the defendant Belgrade faction. The decision is particularly pertinent here because the Dionisije faction was in control of the congregation's name and property, a position substantially identical to that in which the Dionisije faction at St. George in Elizabeth has placed itself. The relief granted to the Belgrade faction was a declaration that its members constituted the true Serbian Orthodox Church of St. Demetrius of Akron, Ohio and were entitled to the possession and use of all the church property which had bene unlawfully withheld from them by the Dionisije group.

St. Sava Serbian Orthodox Church v. *Milan Naperta, et al.*, decided by the Court of Common Pleas of Cuyahoga County, Ohio in the spring of 1965, is another case which

went against the Dionisije position. The division within the Congregation of St. Sava of Cleveland, Ohio had been so bitter that the large, new and costly church edifice had to be closed in order to preserve the public peace. After a trial lasting five weeks Judge White filed a long opinion in which he said:

> "The primary question to be determined here is whether the Diocese of the U. S. and Canada was abolished and its territory divided by lawful authority. Article 16 of the Serbian Orthodox Constitution provides as follows:
>
> "'The decisions concerning the creation, name, abolition, districting and the sees of the Diocese, and concerning the creation and abolition of the positions of the Suffragan Bishops are rendered by the Holy Assembly of Bishops in accord with the Patriarchal Council.'
>
> "The authority thereby reserved to the partriarchate seems to be clear and unambiguous. But it is urged by the defendants that Article 16 must be read and understood in connection with Articles 14 and 15 and with a certain historical fact about the diocese in America. Article 14 names twenty-four dioceses and designates their sees. Article 15 provides:
>
> "'Besides the dioceses enumerated in the previous articles, in the matters spiritual and hierarchical, to the Serbian Orthodox Church also belong these dioceses which are abroad:
>
> "'1. The Serbian Orthodox Church in the United States of America and Canada, with its see in Chicago or in the Monastery of St. Sava, in Libertyville, Illinois;

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"'2. Serbian Orthodox Diocese of Budim;

"'3. Parts of Vrshatz and Temisvar Diocese outside the borders of Yugoslavia, with its see in Temisvar.

"'4. The Czech-Moravian Diocese in Czecho-Slovakia;

"'5. The Serbian Orthodox Vicariate of Skadar with its see in Skadar (Skutari);

"'6. The Serbian Orthodox Churches, Church-Congregations and parishes outside the borders of Yugoslavia (Churches in the Diaspora).
* * *'

"Obviously, Articles 14 and 15 represent an exercise of the authority afforded by Article 16 to create and name prescribe the sees of the 30-odd different dioceses of the Serbian Orthodox Church. The only distinction observed is that between dioceses in the Motherland and dioceses abroad. Such a distinction in no way compromises the authority so exercised. The historical fact alluded to is that only the Diocese of the U. S. and Canada has its own Constitution—all the other dioceses being governed by the Serbian Orthodox Constitution. Overlooked is the added fact that the diocesan constitution and all amendments thereto (prior to November 1963) were submitted to the Holy Assembly of Bishops for approval. This uniform practice speaks loudly to the effect that until the schism which occurred in 1963 Article 16 was taken by the Bishop and the people of American diocese to be operative as to them and to mean what it so clearly states. Further support for this view is to be found in the fact that on one occasion Bishop Dionisy proposed to the Holy Coun-

cil of Bishops that the American diocese be expanded to include South America and Africa with himself as its head with the rank of Metropolitan. He also pointed out that his existing diocese was territorially so vast and was growing so fast in numbers that he was experiencing difficulty in making needed visitations and administering it and suggested that he needed two or more assistant Bishops.

"The court holds, therefore, that the Holy Assembly of Bishops acted within the limits of its constitutional authority in abolishing the Diocese of the U. S. and Canada and in creating and naming in its stead three new dioceses logically based upon geography. It follows that the Holy Assembly properly exercised its constiutional authority in naming the Bishops (including Dionisy) to head each of the three new dioceses and fixing their sees. The former diocese was without any authority to have accomplished the same result on its own motion if it had so desired. The idea of separation from the Mother Church which Bishop Dionisy came to embrace so fondly after the division of the diocese and his own suspension was the rankest sort of heresy to him a year or two before when it was proposed by one Bishop Nicolai. Such a radical departure strongly suggests a drowning person struggling for survival. Under such circumstances belated self-claimed independence and autonomy became but tools of convenience."

* * *

"The schism which has been created among the members of St. Sava and numerous other Serbian Churches in this country is attempted to be justified on the ground that the Communists dominate and control the Mother Church in Serbia. Such a claim

finds no credible support in the record of this case. One is led to wonder why the dissidents, if they were desirous of forming a National Serbian Church in the U. S. did not do so and forthrightly instead of trying their aspirations in that direction to a diocese no longer in existence and to a deposed Bishop desparately trying to preserve it."

The opinion of Judge White was affirmed by the Court of Appeals for Cuyahoga County on April 7, 1966. In his opinion for the three-judge court, Judge Duffey said:

"St. Sava Serbian Orthodox Church is an Ohio corporation not for profit. The petition is in the name of the church. It alleges, in essence, that defendants-appellants illegally claim to hold corporate offices and are illegally acting in various ways to interfere with the conduct of church affairs. A general denial and so-called 'cross-petition' were filed. The cross-petition names as defendants certain individua' , alleges that defendants-appellants are the true, lawful officers of St. Sava Church, and that the new defendants are the ones who illegally claim and are attempting to exercise corporate authority in the church.

"At the outset, we again remind all parties that a man's beliefs, and his acceptance or rejection of ecclesiastical authority, cannot be decided for him. By coming into a civil court, only the control of buildings and material things can be effected. Such control can be used as a weapon to deepen the wounds of controversy, but of itself cannot help solve religious differences. Everyone should clearly understand that no court of civil law can restore unity to the congregation of St. Sava Church."

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I have also mentioned above litigation over church affairs in Indiana. That is indicated by a letter opinion furnished to me which is dated June 6, 1967 and which was filed by Judge Simpson of the Elkhart Circuit Court. However, Judge Simpson said almost about the facts of the case before him and I find his opinion of no help here; it is interesting only to show another example of the widespread controversy within the church.

In Illinois litigation has taken a different form. There the litigants have been seeking to get control of the properties of the incorporated American-Canadian diocese, which was formed under the laws of Illinois as a religious society in 1936, its name being "Serbian Eastern Orthodox Diocese for United States of America and Canada." The trial court granted summary judgment and on appeal this was reversed. *Serbian Eastern Orthodox Diocese for United States and Canada, et al.* v. *Ocokoljich, et al.*, 72 Ill. App. 2d 444; 219 N. E. 2d 343 (1966). The essential holding of the appellate court seems to be that the case called for trial rather than disposition on motion. The opinion, however, contains interesting material on the long history of the Serbian Orthodox Church, much if not all of which will be found in the record before me. It also contains a statement that the court was obliged to accept the ecclesiastical determination that Dionisije had ceased to be the bishop of the American Canadian diocese. That statement is followed (page 350 of 219 N. E. 2d) by a declaration that the diocese was not subject to the provisions of article 16 of the constitution of the patriarchate (quoted above) giving power to the Holy Assembly of Bishops to create, abolish and fix districts for dioceses. I cannot accept the construction and effect given to article 16 by the Illinois court. The American Canadian diocese was merely one diocese of the Serbian Orthodox Patriar-

chate. It was no more above the powers given to the Holy Assembly by article 16 of the constitution of the patriarchate than was any other diocese. It may also be said about the Illinois decision that the problem dealt with was the possible transfer of property ownership from an incorporated diocese to another owner, while in the case before me the only question is proper control of the property-owning corporation without any question of transfer of ownership being involved.

My conclusion is that the American Canadian Diocese was abolished by action of the Holy Assembly of Bishops taken on May 10, 1963; that the creation of a new Mid-Eastern American Canadian Dioeese, as well as two others, was effective and that the Congregation of St. George became a part of this new diocese. I can adopt the following language of Judge Matz in *Serbian Orthodox Church Congregation of St. Demetrius* v. *Kelemen, et al., supra,* as a summary expression of my views:

> "If the Holy Bishops Assembly had the right under Article 16 to divide the original diocese, then it could hardly be said that its action would, in effect, be an amendment of the Diocesan Constitution since the two constitutions must be read together in determining that question.
>
> "However, it is not necessary for the Court to decide the validity of the division of the diocese and the establishment of three new dioceses. The Mother Church has decided and declared, in effect, that the old diocese does not exist. The diocese, under the leadership of former Bishop Dionisije, has declared that it is no longer part of the Serbian Patriarchy.
>
> "This church was organized, as the evidence discloses, as a church of the Serbian Patriarchey."

* * *

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"That the Serbian Eastern Orthodox Church is a hierarchy is conceded by both parties to this lawsuit and, in fact, the Constitution of the dioceses and the Patriarchy spell it out in detail. The Constitution of the Patriarchy, Article 5, recites the order of the various organizations of the church and lists them, including the local church congregation. The diocese itself, as shown by its Constitution, is subservient to the Patriarchy."

* * *

"Plaintiffs and those in sympathy with them are rebelling against the patriarchy and are following the former bishop who is not a bishop and are considering themselves a part of a church which is not a part of the Orthodox church system and not a part of the Eastern Orthodox Church. Consequently, the evidence in this case identifies the defendants and those in association with them as the successors to the church and who maintain and profess its submission to the Serbian Eastern Orthodox Church."

In this case, as in some of the other litigation I have referred to, an effort has been made to justify the pro-Dionisije position by contending that the Serbian Patriarchate was influenced by pressure from a Communist government. There was a little evidence presented to me indicating that the governmental authorities of Yugoslavia have in some instances discouraged or forbidden religious practices. The proof thus offered does not show in the slightest that the creation of the three new dioceses and the stripping of all clerical rank from Dionisije was dictated or influenced by the political power of party or government.

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As to the principles of law which apply here, I have already cited *Watson* v. *Jones*, in which the United States Supreme Court long ago dealt with the effect upon local church property of a division within a congregation. The law of New Jersey follows *Watson*. Recently the Appellate Division in *St. John's Greek Catholic Hungarian Russian Orthodox Church of Rahway* v. *Fedak, et al* (decided September 12, 1967 and not yet reported) said:

> "The limited role available to the courts in church disputes has been reiterated time and again. In general, decisions of the highest authorities of the church organization on questions of discipline, faith and ecclesiastical rules, custom and bylaws are binding on the courts. *Watson* v. *Jones*, 80 U. S. (13 Wall.) 679, 20 L. Ed. 666 (1872). In the case of property belonging to a particular ecclesiastical organization which is part of a larger general church organization, a majority cannot secede from that organization and transfer the property of the church to another use. *American Primitive Society* v. *Pilling, supra*, 24 N. J. L. at pp. 657-58; *True Reformed Dutch Church* v. *Iserman*, 64 N. J. L. 506 (Sup. Ct. 1900); *Presbytery of Jersey City* v. *First Presbyterian Church*, 80 N. J. L. 572 (Sup. Ct. 1910); *Karoly* v. *Hungarian Reformed Church*, 83 N. J. Eq. 514 (Ch. 1914), affirmed 84 N. J. Eq. 203 (E. & A. 1915); *Kelly* v. *McIntire*, 123 N. J. Eq. 351 (Ch. 1938). In the latter case the court held that:
>
> > " 'The principle seems to be firmly established that a congregation belonging to a religious denomination and subject to the constitution, faith and doctrine thereof, cannot use its property for a purpose other than that sanctioned by the denomination'." (at p. 361)

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The plaintiffs in docket No. C 2874-64 are not entitled to relief. The plaintiffs in docket No. C 3604-64 are entitled to a judgment declaring that the Serbian Eastern Orthodox Congregation of St. George, Elizabeth, N. J. is a congregation of the Serbian Orthodox Diocese, known as the Mid-Eastern American Canadian Diocese, created by the decision of the Holy Assembly of Bishops dated May 10, 1963; also declaring void the purported amendments to the congregation's by-laws adopted February 21, 1965 with the objective of excluding from membership all who might be unwilling to support the continued existence of the single American-Canadian Diocese. The judgment shall further provide that all offices of the incorporated congregation be vacated by individual defendants named in docket No. C 3603-64 and shall be turned over at once to nominees of the plaintiffs in that action together with all books, records and other incidents of the respective offices to the end that the corporation may be placed fully under the control of members of the Serbian Orthodox Church who recognize and adhere to the Mid-Eastern American Canadian Diocese and its bishop as well as to the Serbian Orthodox Patriarchate.

Control of the corporate congregation should bring with it control and use of all church property but jurisdiction will be retained so that any problems can be brought before the court which may arise or be disclosed in connection with restoring the use of the material assets of the congregation to the persons and purposes for which those assets have been dedicated. Though the defendants in docket No. C 3603-64 have the right to form any church or affiliate with any church they choose—in short, they are guaranteed freedom of religion by the constitutions of the United States and of the State of New Jersey—they cannot hold themselves out as something they are not; and so

they and all persons who are or may become affiliated with them in the schismatic congregation which is the product of the break with the Serbian Orthodox Patriarchate and its Mid-Eastern American Canadian Diocese should be enjoined from using the name St. George and from using the name of the established newsletter of St. George on any similar publication.

Nothing found in this opinion should be read by the successful litigants as a justification for excluding anyone from the Congregation of St. George, who if he qualifies from a religious point of view, is willing to accept the new diocese, its bishop and its position as a part of the Serbian Orthodox Patriarchate.

APPENDIX C

(*Per Curiam* Opinion of Superior Court of New Jersey, Appellate Division)

Superior Court of New Jersey
Appellate Division

Argued June 2, 1969—Decided June 13, 1969.

Before Judges GAULKIN, COLLESTER and LABRECQUE.

Mr. Daniel J. Russell argued the cause for appellants.

Mr. Paul R. Williams argued the cause for respondents (*Mr. Theophil D. Krehel* of the New York Bar, on the brief).

PER CURIAM. This appeal involves a controversy between two groups for control of the Serbian Eastern Orthodox Congregation of "St. George," Elizabeth, N. J.

Prior to May 10, 1963 St. George's was a constituent part of the "Serbian Eastern Orthodox Diocese in the United States and Canada." As originally constituted, that diocese (hereafter the old diocese) comprised the entire territory of the United States and Canada and was one of those making up the Serbian Orthodox Church (the mother church), with headquarters in Belgrade, Yugoslavia. The spiritual head of the mother church was the Serbian Patriarch and the power of appointment of its bishops was vested in its Holy Assembly of Bishops (the Holy Episcopal Council). Prior to May 10, above, Dragoljub Milivojevich, under the name of Bishop Dionisije, was bishop of the old diocese by appointment of the Holy Assembly.

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On May 10, 1963 the Holy Assembly, with the approval of the Patriarch, divided the American and Canadian Diocese into three. St. George's was in the new Mid-Eastern American Canadian Diocese. Bishop Dionisije was assigned as bishop of the new Mid-Western Diocese. Bishop Dionisije was assigned as bishop of the new Mid-Western Diocese but was suspended from office pending the hearing and determination of certain charges which had been made against him.

Bishop Dionisije opposed the subdividing of the old diocese and sought to enlist support in resisting it. Certain members of the congregation of St. George (hereinafter the Dionisije group) responded by advising him in a letter of their desire to "help to revoke the decision of the Holy Synod" and by later participating in a Diocesan Assembly in which the old diocese, in effect, declared its independence of the mother church. Other members of the congregation (hereafter the Belgrade group) were unwilling to adopt a position in opposition to that of the mother church, and when they sought to cooperate with the bishop appointed to preside over the newly created Mid-Eastern Diocese (the new diocese), they were compelled from membership in the congregation and prohibited from attending its meetings or social functions. The bylaws of the congregation were also amended to exclude from future membership those "not recognizing the jurisdiction of the Serbian Orthodox Diocese for the United States of America and Canada having its seat in Libertyville, Illinois," (meaning the old diocese). Since that time St. George's has been in the hands of the Dionisije group while those opposed have been compelled to hold services elsewhere.

The charges against Bishop Dionisije were heard by the Holy Assembly of bishops which found him guilty and entered an order, dated March 15, 1964, removing him as bishop and reducing him to layman status. One of the charges of which he was found guilty was schism. On March 24, 1966 the bishops having jurisdiction over the three newly created American-Canadian dioceses issued a bulletin in the form of a Declaratory Hierarchical Act which, in effect, branded

his followers as schismatics who had lost their "status and all rights or privileges in the Serbian Orthodox Church."

The judge of the Chancery Division, following *Watson v. Jones*, 13 *Wall.* 679, 80 *U. S.* 679, 20 *L. Ed.* 666 (1872), determined that St. George's was an integral part of the Serbian Orthodox Patriarchate and of the new diocese established by the mother church, and that neither Bishop Dionisije nor the old diocese any longer had jurisdiction over it. He declared invalid the exclusion of the Belgrade group from membership, declared vacant all offices held by members elected by the Dionisije group, and ordered that the books and other records be turned over to those recognizing the Patriarchate and the new diocese. The present appeal by members of the Dionisije group challenges the resultant judgment.

As the law stood at the time the matter was tried, we are satisfied that *Watson v. Jones* applied and that the judgment was fully sustainable, substantially for the reasons set forth in the written opinion of the trial judge. Compare *St. John's Greek Catholic, etc. Church v. Fedak*, 96 *N. J. Super.* 556 (*App. Div.* 1967), certification denied 50 *N. J.* 406 (1967). However, the case was tried, and appellants' original brief was filed, prior to the coming down of the decision of the United States Supreme Court in *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 *U. S.* 440, 89 *S. Ct.* 601, 21 *L. Ed.* 2d 658 (1969), and appellants urge in their reply brief, *inter alia*, that in determining the issues here the trial judge invaded fields of decision which were held in that case to be denied the courts by the First Amendment to the Federal Constitution. We disagree and hold that *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* also calls for affirmance.

[1] Appellants take the stand that they remain members of the Serbian Orthodox Church, although not following it in the matters here involved. That church is an autocephalous hierarchical one which functions under the spiritual guidance of its Patriarch. Its highest body is the Holy Assembly of

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Bishops, upon whom rests the power to appoint and remove bishops. The Holy Assembly, which had appointed Bishop Dionisije, has removed him as bishop and solemnly declared him to be no longer an Orthodox clergyman. We are assured by appellants that they do not ask us to review that action, and we recognize that we may not do so. *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra; Watson v. Jones, supra; Kreshik v. St. Nicholas Cathedral,* 363 *U. S.* 190, 80 *S. Ct.* 1037, 4 *L. Ed. 2d* 1140 (1960). Thus, with certain exceptions to which reference will be hereafter made, we may not look beyond the ecclesiastical determination that Dionisije is no longer a bishop having jurisdiction over the diocese of which St. George is a part, but is a schismatic, cut off from the body of the church.

[2] As to the status of those, including, allegedly, appellants, who continue to follow Dionisije in spite of his removal and unfrocking, we are confronted with the Declaratory Hierarchical Act of the bishops appointed by the Holy Assembly to govern the three new Serbian Orthodox Dioceses in the United States and Canada, which declares that those who follow Bishop Dionisije are schismatics who *ipso facto* "have cut themselves off from the Mystical Body of Christ, the Holy Orthodox Church and so have *excommunicated themselves* from the family of Holy Orthodoxy throughout the world." The trial judge implicitly determined, and we find the proofs support that conclusion, that appellants here qualify as followers of Bishop Dionisije who thus became schismatics.

[3] Likewise, under *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* we may not on this appeal review the validity of the action of the Holy Assembly of Bishops, acting under the authority of Article 16 of the constitution of the mother church, in subdividing the old diocese, and appellants make it clear in their reply brief that they are not seeking such review. Further, assuming, as the court there pointed out, that a narrow

review of a specific ecclesiastical decision would be permissible under *Gonzalez v. Roman Catholic Archbishop,* 280 *U. S.* 1, 50 *S. Ct.* 5, 74 *L. Ed.* 131 (1929), to determine whether fraud, collusion or arbitrariness appeared, the proofs here are entirely deficient in that respect. While there was some suggestion of communist domination of the mother church as having played a part in the division of the old diocese, supporting proof was entirely lacking and the trial judge specifically found to the contrary.

Thus it would appear that the basic conclusions of the trial judge rest, not upon his determination of ecclesiastical questions whose determination by the courts may be inhibited by *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* or *Watson v. Jones, supra,* but upon the recognition of decisions made by the highest authority of the mother church of which the Church of St. George was a constituent part from the time of its organization. The resultant judgment leaves intact the congregation's constitution and bylaws as they existed prior to the amendment, excluding those not recognizing the old diocese. Since the constitution of the old diocese has been carried over into the new diocese, the relations between St. George's and the new diocese, and between the latter and the mother church, remain the same.

The judgment of the Chancery Division is accordingly affirmed.

APPENDIX D

(Order Denying Petition for Certification)

(Filed—September 30, 1969)

SUPREME COURT OF NEW JERSEY
C-56 September Term 1969

SERBIAN EASTERN ORTHODOX, etc.,

Plaintiff-Petitioner,

vs.

SERBIAN EASTERN ORTHODOX, etc., *et al.*,

Defendants-Respondents.

ON PETITION FOR CERTIFICATION

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 30th day of September, 1969.

JOHN H. GILDEA
Clerk of the Supreme Court

APPENDIX E

(So-called "Declaratory Hierarchical Act")

SERBIAN ORTHODOX CHURCH IN THE
UNITED STATES OF AMERICA AND CANADA
BISHOP'S COUNCIL
8347 WEST SUMMERDALE AVENUE
CHICAGO, ILLINOIS 60656

BISHOP STEFAN
BISHOP FIRMILIAN
BISHOP GREGORY

To All Our Beloved Clergy and People of the Serbian Orthodox Church in the United States of America and Canada:

> The grace of our Lord Jesus Christ
> the love of God the Father, and
> the Communion of the Holy Spirit
> be with you all!

Dearly Beloved:

We have been asked by a number of persons, both clergy and laity, as to the status of those who follow the Schism

of the former Bishop Dionisije, who was justly defrocked after due process in accordance with the appropriate Canons, statutes and provisions of our Serbian Orthodox Church, and then returned to the status of a layman with his baptismal name of Dragoljub Milivojevich.

The questions asked were:

Is the Schismatics' claim that they are still members of the Holy Orthodox Church, even though they refuse due ecclesiastical obedience to the lawful Authorities of the Church, right or wrong?

Have the external rites performed by their clergy any validity, and do they convey any grace? . . .

If they repent, how are they to be reinstated to membership in the Serbian Orthodox Church? . . .

Should those who continue to remain with the deposed and defrocked former bishop be expelled and excommunicated from the Holy Orthodox Church? . . .

Dearly Beloved:

For your spiritual guidance the following are our Directives, which henceforth must be followed by all clergy, Church officers and members, and are to be announced in our Churches and published for the enlightenment of the faithful.

The Holy Orthodox Church is the oldest existing religious institution in unbroken continuity in the contemporary world, and as such, has established rules and regulations in these matters, and we have but to avail ourselves of the appropriate rules and regulations as prescribed by our Holy Orthodox Church. The Dionisije Schism, like the precedents in the past, started as a parasynagogue, then developed into a schism and is culminating into open heresy by giving the laity the never heard of right to sit in judgment over clerics and even to decide on matters purely sacramental and hierarchiacal.

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This the Schismatics have already done in their newly established Constitution by which they have formally created a new "faith" in total separation, not merely from their original Mother, the Serbian Orthodox Church, but ipso facto, they have cut themselves off from the mystical Body of Christ, the Holy Orthodox Church and so have *Excommunicated Themselves* from the family of Holy Orthodoxy throughout the world.

Those who perpetrate a schism and upset the peace of the Church commit a grave sin against the Church's unity. The Holy Canons, our Constitution and our Penal Code provide the most severe penalties for such a grave ecclesiastical offense: For the clergy, deposition, and for the laity, excommunication. Those who join in prayers with the deposed are themselves to be deposed, if clerics; and those who do the same, if lay persons, are excommunicated. (See the Canons 10 and 11 of the Holy Renown Apostles and the other related numerous Canons of the Holy Orthodox Church).

The offending *members of the Church* are subject to canonical penalties for the sake of their correction: Those who recoginze the hierarchical and ecclesiastical authorities and who intend to stay in the communion of the Church. Those who of themselves follow ungodly ways of persons who pretend to be bishops of the Church, while in fact they try to "climb in by another way" (John 10.1) have left the Church already and have severed themselves from her faith, love, mysteries and jurisdiction and so have condemned themselves.

As for the validity of the purported sacraments, performed by their clergy, the Canons clearly explain that there is *No Such Thing* as a Sacrament outside of the Church, though it might have been outwardly performed by a former cleric, bishop or presbyter. This rule the Church followed in the past as it does in the present.

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This is the Canonical ruling:*

> ". . . because the beginning, true enough, of the separation resulted through a schism, but those who SECEDED FROM THE CHURCH HAD NOT THE GRACE OF THE HOLY SPIRIT UPON THEM; for the impartation thereof CEASED with the interruption of the service. For although the ones were the first to DEPART had been ordained by the Fathers and with imposition of their hands they had obtained the gracious gift of the Holy Spirit, yet after BREAKING AWAY they became laymen, and had no authority either to baptize or to ordain anyone, nor could they impart the grace of the Spirit to others, after they themselves had forfeited it. Wherefore they **bade that those baptized by them should be regarded *baptized by laymen* and that when they came to JOIN THE CHURCH they should have to be repurified by the true baptism as prescribed by the Church".

Therefore, in light of the Church's position in regard to those who, of their own will, have left the Church, we hereby issue the following Directives to be followed by all concerned:

1. A Person, lay or cleric, of the Serbian Orthodox Church who has joined any schismatic organization or congregation, locally or nationally, has left his Church of his own accord, and has no lawful status within the Serbian Orthodox Church. He is to be considered as a person of another faith, non-Orthodox, and non-acceptable to Holy Orthodoxy.

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* Canon One of St. Basil's Epistle to Amphilochius.

** Under "they" here St. Basil refers to the priorly quoted fathers of the Church St. Cypriane of Carthage and St. Firmilian of Capadocia.

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2. A Person, lay or cleric, of the Serbian Orthodox Church, who has at any time given public support to the former Bishop Dionisije, Mr. Dragoljb Milivojevich of Libertyville, Illinois, by signing any document in recognition of his illegal claims to be a bishop of the Serbian Orthodox Church, or who did so in behalf of or for any of his associate clergy, not in subsection to the lawful Ecclesiastical and Hierarchical Authorities, is to be considered as one who, of his own free will, has seceded from the Serbian Orthodox Church, and, therefore, has lost his status and all rights or privileges in the Serbian Orthodox Church;

3. A Person, lay or cleric, of the Serbian Orthodox Church, who has participated at any gatherings, committees, conventions, or who attends liturgical activities and participates in the purported sacraments of the deposed and defrocked former Bishop Dionisije or his associate clergy, or who contributes to the Schismatics any funds, or who accepts a position in the schismatic organizations and their committees; by such behavior, has abandoned his Mother Church and so has lost every status and right within It;

4. A Person, lay or cleric, of the Serbian Orthodox Church, who refuses obedience to his hierarchical and ecclesiastical authorities, or who incites rebellion, or who plots against said authorities, or who denies them due respect, or who slanders them and disparages them, or does not recognize and refuses to comply with their decisions and orders, or who refuses to receive in his home his lawful Serbian Orthodox Priest, as is the custom on Epiphany home blessings; said person who has or will insult Serbian or any other Orthodox Hierarchs, clergy and church officers by picketing, slogan shouting, or who subjects them to any other in-

dignities has to be considered as one who has left his Mother Church, and is hostile and abhorrent to the Serbian Orthodox Church; and therefore, he has lost every status and right in the Serbian Orthodox Church.

Should such a person in the future repent and be desirous of rejoining the Church, the normal procedure for the admittance of converts has to be followed:

First, he will have to satisfy the local Serbian pastor that he is truly sorry for his former hostility towards the Church and his association with the Schism.

Second, he will have to apply for readmittance to the jurisdictional Serbian bishop with a written recommendation of the local Serbian pastor. Only then, upon the written blessing of the bishop, will the pastor be able to admit him by the normal rite for the admittance of Schismatics, after his pledge of obedience and fidelity, through the Holy Sacrament of Penance and Communion.

Children and persons baptized by the Schismatic clergy must be considered as having received only a LAYMAN'S BAPTISM; therefore the Sacrament of Baptism must subsequently be administered by a clergy of the Serbian Orthodox Church, according to the Service Book (Trebnik), and the sacrament of the Holy Shrismation will be administered normally according to the order of *Trebnik*.

In case a member of the Church requests a Schismatic to be Godparent (Kum) of his child at Baptism, such a request, being contrary to the Canons of the Church, must be rejected.

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For those who will be truly repentant, there will be a warm welcome in the Serbian Orthodox Church. With the unrepentant, there can be no compromise, neither in regard to the Church's Truth, nor to Its ecclesiastical discipline and authority.

This Declaratory Hierarchical Act supercedes the Declaratory Act of the Episcopate of the Serbian Orthodox Church in America and Canada of February 29, 1964, Ref. No. 64/1964; the latter being hereby declared null and void.

We extend our most cordial wishes and offer our most fervent prayers that the misled will *"come unto the knowledge of truth"** and be led to the fold of our Holy Serbian Orthodox Church and so rejoined to the Body of Christ, from which they have cut themselves off, and that you, our beloved faithful clergy and laity, will help them by refraining from any hostile act and by your prayers and your kindness and by your intelligent witness to the truth, always *"speaking the truth in love"** and *"let all bitterness and wrath, and anger, and clamor, and slander be put away from you, with all malice"** *"Correct your opponents with gentleness. God may perhaps grant that they will repent and come to know the truth, and they may escape from the snare of the devil, after being captured by him to do his will."***

May the mercy of God be with you and keep you in faith and faithfulness to our Heavenly Father, to our Blessed Saviour, the Head of His and of our Most Holy Church, and the sanctifying fellowship of the Holy and Life-creat-

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* I Tim. 2:4

* Eph. 4:31

** II Tim. 2:25-26

ing Spirit, the Sanctifier of the Inner Life of the Church be with you now and always, and our love in the Lord.

Dated this 24th of November, 1966, A.D.
EC No. 100/1966.

(Signed) Bishop Firmilian
Bishop of the Midwestern American Diocese, and Bishop in charge of the Eastern American and Canadian Diocese.

(Signed) Bishop Gregory
Bishop of the Western American Diocese.

APPENDIX F

(Constitution Serbian Orthodox Diocese in the United States of North America and Canada)

Published by

THE DIOCESAN ADMINISTRATION OF AMERICA-CANADA

1939

Translated by: V. Rev. M. D. Mijatovich

CONSTITUTION

SERBIAN-ORTHODOX-DIOCESE
in the
UNITED STATES OF NORTH AMERICA AND CANADA

accepted at the Diocesan Church-National Assembly in 1927, and amended and revised at the Diocesan Church-National Assemblies of 1931 and 1938 approved by the decision of the Holy Bishop's Synod of the Serbian Orthodox Church, Sin. No. 2386/Zap. 1457 and December 1/14, 1928 (in accordance with the authorization of the Holy Bishop's Assembly of the Serbian Orthodox Church A.S. No. 14/77 of 12/25, 1928) and decision of the Holy Bishop's Assembly of the Serbian Church dated May 24/11, 1939 A.S. No. 69/132, 1939.

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B) 1. Diocesan funds;

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First Part

Diocese and Diocesan Bishop

I

Position of the Serbian Orthdox Diocese in the United States of North America and Canada

Art. 1

The Serbian Orthodox Diocese in the Northern States of America and Canada is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia and enjoys all the benefits which originate therefrom.

Art. 2

All statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for the Serbian Orthodox Diocese in the United States of North America and Canada, with the exception of specific cases which must be formulated with regard to local circumstances in accordance with ecclesiastical and judicial principles.

Art. 3

The jurisdiction of the Serbian Orthodox Diocese in the United States of America and Canada with its Diocesan See in Chicago, includes the entire political territory of the United States of America and Canada, which as such by its geographical location enjoys full administrative freedom and accordingly, it can independently regulate

and rule the activities of its church, school and other diocesan institutions and all funds and beneficiencies, through its organs, but in accordance with the laws of this constitution and in agreement with the laws of the United States of America and Canada.

Art. 4

The Serbian Orthodox Diocese in the United States of America and Canada is comprised of Serbian Orthodox Church-school Congregations-Parishes, churches, monasteries, archpresbyterates, established within the territory of the above mentioned states, and which fall under the spiritual, executive, ecclesiastical-judicial and controlling authority of the diocesan organs (Bishop and Diocesan Council). Therefore, every Serbian Orthodox Church-school Congregation, church, monastery, and archpresbyterate already existing or which shall be established in the above mentioned territories must be in ecclesiastical-canonical bond with this Diocese and recognize its authority and power.

Art. 5

This Constitution embraces all legislative and administrative organs of the Diocese and by it are regulated the following church authorties and its organs:

A) Diocesan Church-National Assembly, whose executive and administrative organ is the Diocesan Council which is composed of two committees:

1) Diocesan Religious-Educational Board, and

2) Diocesan Financial-Executive Board, and

lower authorities and organs are:

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B) Diocesan Ecclestical Court.

1) District archpresbyterates whose organs are archpresbyterate offices and archpresbyters;

2) Serbian Orthodox Church-School Congregations, the organs of which are the church-school general assemblies and executive boards, and

3) Serbian Orthodox Parishes, the organs of which are the parochial chanceries and the parish priests.

Art. 6

Every organ of the church-school board in the Diocese is subordinated in all executive matters directly to the higher executive organs of the Diocese.

Art. 7

The filing of complaints against decisions of the diocesan authorities must be submitted within a 30 day period excluding the date of decision, namely date of receipt, and it is considered that the complaint is duly presented if filed before the 30 day expiration date.

Art. 8

The diocesan authorities decide independently on all matters within their jurisdiction and in accordance with this Constitution, so that the protection of the civil authorities cannot be sought against their decisions except if same conflicts with the laws of the United States and Canada.

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II

Diocesan Bishop

Art. 9

The Bishop of the Serbian Orthodox Diocese in the United States of America and Canada is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate.

Art. 10

The Bishop by virtue of his archipastoral calling is privileged in granting church-educational directives in the general activities of the diocese.

The following comes within the jurisdiction of activity of the diocesan bishop:

a) to preserve, defend and sustain among the people, One, Holy, Ecumenical and Apostolic church and repel all activities contrary to Orthodoxy;

b) to see that the divine worship in church is conducted in accordance with the church law-constitution;

c) to endeavor, in accordance and in cooperation with the Diocesan Council, that new church-school congregations be established, that churches be erected and repaired, and he, himself, to check and to approve the holy icon screens, murals and all important church-serving essentials and vestments;

d) to see that all churches are supplied with *Holy Chrysm*, service books, crosses and generally with all necessary church articles essential for the divine worship,

as well as that all be kept in good order and recorded in a special inventory;

e) to consecrate new churches and corporals;

f) to make canonical visitations in his Diocese in accordance with church regulations;

g) to ordain worthy persons with theological training to priesthood, if needed; to appoint them to parishes and to elevate deserving clerics in all priestly and monastic orders;

h) to execute all canonical orders of the Holy Assembly of Bishops;

i) to appoint replacements for deceased abbots, vicar-generals and priests until the election of his permanent replacement;

j) to appoint substitutes for those priests on vacation or sick-leave or who have been assigned to perform some national or official duty;

k) to direct, when a church is closed due to building hazards and it being unsafe to serve in same, where the church serving essentials are to be stored for safe-keeping and where the priest will conduct services.

l) to decide questions of degrees in relationships and to, within the canonical limitations and the decisions of the Holy Bishop's Assembly, render dispensations to related persons to wed; and to grant dispensation from announcements in instances of proven necessity.

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m) to grant leaves for priests and personnel of the Ecclesiastical Court;

n) to mitigate the degree of punishment pronounced by the Ecclesiastical Court, if he finds justifiable cause to do so;

o) to inform the clergy and laity of various canonical directives from the Holy Pontifical Synod;

p) to submit to the Holy Bishop's Assembly of the Serbian Patriarchate an annual report of his archipastoral activities; and,

q) to prepare, accept and appoint new priests for this Diocese according to the indicated need and with prior agreement of the Ecclesiastical Court.

Art. 11

The Diocesan Bishop, within his canonical rights, will issue when the need arises, greetings and epistles to the clergy and laity of his diocese, in order to strengthen faith and christian morals.

Art. 12

The Diocesian Bishop in the United States of America and Canada is obliged to recognize as the head of the Serbian Patriarchate, the Archbishop of Ipek, Metropolitan of Belgrade-Karlovac and Serbian Patriach, whom he mentions in all services. He shall not make any changes or innovations in the established order and work of the church without prior agreement with him.

Accordingly, the Diocesan Bishop shall submit to the Serbian Patriach for review, all regulations which may be issued by any diocesan authority, which shall if they touch upon the sphere of internal church administration, be subject to the approval of the Holy Pontificial Synod, as the highest executive church authority.

Should the Diocesan Bishop find by his own assurance, that decisions rendered by any church authority or organ are contrary to the teachings of the Holy Church, her regulations and canons, or to the vital interest of the church, he shall halt the execution of such decision and submit the matter for rediscussion and redecision. If he again is not in accord with redecision as reconsidered, he shall submit the case for final decision to a higher authority and if necessary, to the Holy Pontifical Synod.

Art. 13

In the event of illness or absence, the Diocesan Bishop assigns his own substitute and designates his authority. When the seat of the Diocese Bishop is vacated, the administration of the widowed diocese is upheld in all her spiritual and administrative matters by the Ecclesiastical Court and Diocesan Council until the appointment of an administrator, which appointment is made by the Serbian Patriarch with the Holy Pontificial Snyod.

Art. 14

The administrative divisions of the Diocese into archpresbyterates and vicar-generalities as well as all the boundaries of the parishes, is done by the Bishop together with the Ecclesiastical Court and the Diocesan Council when the need calls for same.

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The Diocesan Bishop is at the same time the supreme head of the St. Sava Monastery in Libertyville. He appoints the abbot of same and conducts the canonical supervision and the higher executive authority over the monastery.

Second Part

DIOCESAN CHURCH—NATIONAL ASSEMBLY

Art. 15

The Diocesan Assembly is the main legislative and controlling body in the Diocese and represents the entire Orthodox Serbs in the United States of America and Canada.

Art. 16

The Diocesan Assembly consists of:

1) Delegates elected by individual church-school congregations, namely two laymen:

2) Both orders of all the Serbian Orthodox clergy;

3) Diocesan Bishop;

4) all members of the Diocesan Council;

5) all Serbian colonies who are without a church and priest, but who have a regular school operating under Diocesan jurisdiction, have the right to two delegates, one of whom is obligatory the teacher of the school.

6) representatives of the people at large and distinguished educators and friends of Orthodoxy and of our people's welfare, are privileged to attend all Diocesan-Assembly meetings in the capacity of advisory members, but without the right to vote.

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Art. 17

All delegates must possess the prescribed credentials which must be verified by the Credentials Committee.

Art. 18

The traveling expenses of the delegates are financed by their respective organizations, namely, congregations.

Art. 19

Delegates of one organization may also represent another organization in cases where the necessity is justified, in which event both organizations, i.e. congregations share in the delegates expenses equally.

Regardless of how many congregations or organizations they might represent according to the submitted credentials, all delegates are entitled to only one vote each. Each delegate must be a member in good standing of the church-school congregation and as such any may be elected to the Diocesan Council. In case he ceases to be a member of his church-school congregation, he automatically ceases to be a member of the Council.

Art. 20

The Diocesan Assembly meets in session every third year in the month of September or on the day designated by the Diocesan Bishop where the Episcopal See is located—Libertyville—decides on all administrative, legislative, financial and religious-educational church matters which concern the entire Diocese i.e. its constituents.

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Art. 21

The election of the delegates to the Diocesan Assembly should be made, if possible, a month prior to the Diocesan Assembly.

Grievances against elected delegates for the Serbian Church-National Assembly are directed to the Diocesan Council within eight days from the date of election.

Art. 22

The Diocesan Assembly is opened by the Diocesan Bishop who is by virtue of his high calling, the president of the assembly. Upon opening the assembly he shall invite same to be duly constituted and to elect the necessary presidium: two vice-presidents, one of whom is a priest, and one a layman and two or more secretaries.

Art. 23

The Diocesan Assembly upon being duly constituted, performs the following:

1) changes and amends the order of agenda submitted by the Diocesan Council;

2) accepts reports of the Diocesan Council dealing with the entire work in the Diocese for the past three years;

3) decides concerning the sources and acquisition of revenue required for the maintenance and support of the Diocese;

4) approves the program of work of the Diocesan Council for the ensuing three years;

5) decides on all matters which the Diocesan Council submits for consideration;

6) elects the Diocesan Council for a three year term;

7) controls the assets of the Diocese, the entire past year's work of the Diocesan Council and its organs;

8) decides on changes and amendments to the Constitution with the approval of the Holy Bishop's Assembly of the Serbian Patriachate.

Third Part

Diocesan Council

Art. 24

The Diocesan Council is the main executive and controlling board in the Diocese for external church religious and educational matters.

Art. 25

The Diocesan Council, in addition to the Bishop, is composed of twelve regular members elected by the Diocesan Assembly for a period of three years, seven of whom are of the laity; five are of the clergy and six alternates, four of whom are of the laity and two of the clergy.

Art. 26

Members of the Diocesan Council may not be related to one another or to the Bishop to within four degrees of canonical computation, neither as blood relatives or through marriage.

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Art. 27

The mandate of the members of the Diocesan Council continues for three years beginning from the day of election. Until that time, old members perform the work of the Council.

Art. 28

Membership in the Diocesan Council is honorary and therefore is fulfilled without any compensation, except in the cases of members from afar whose traveling expenses are paid.

Art. 29

Upon assuming their positions of trust, the members of the Diocesan Council must at an open meeting take an oath before the Bishop stating that they will perform their duties conscientiously, correctly and objecting and to the best of their abilities fulfill same and that they will keep in strict confidence official secret deliberation.

Art. 30

The Diocesan Council is comprised of two sections—committees;

I. Diocesan financial-executive committee and

II. Religious-educational committee

a) Each of these two committees, aside from its president, has six additional regular members: the religious-educational committee has three laymen and three clergymen and the financial-executive committee has four laymen and two clergymen. Alternate members, three from the clergy and three from the laymen, are appointed by the Bishop for each committee in accordance with the Diocesan Council.

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The president or vice-president may designate one member from either section to preside over either section in case of necessity.

b) The Diocesan Council holds its meetings thrice annually and if necessary, more frequently;

c) the president of the Diocesan Council is the Diocesan Bishop. The vice-president is appointed by the Bishop in agreement with the Diocesan Council. He is simultaneously the vice-president of every diocesan body except the Ecclesiastical Court, if he is not a clergyman;

d) The diocesan secretary, who is at the same time the secretary of the Diocesan Council also, is appointed by the Bishop as a permanent clerk of the Diocese. The secretary of the Diocese is paid his wages from the Diocese Treasury;

e) The referent of the Diocesan Council is the diocesan secretary or an especially appointed member of the Diocesan Council.

f) Should a vacancy occur in the Diocesan Council, it is filled by election of the Diocesan Council.

Art. 31

The committees of the Diocesan Council hold their meetings regularly once a month, or when necessity demands. Each regular member of the committee, if he is unable to attend a meeting, is obliged to notify the president of the Council on time, who will then take the necessary steps to invite an alternate member to the said meeting.

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Art. 32

In rendering valid decisions in the Diocesan Council, it is necessary that two-thirds of the members be present besides the president and vice-president.

In order that the committees of the Diocesan Council might render valid decisions, it is necessary that two-thirds of its members be present personally or represented by their alternates in addition to the president i.e. vice-president.

Art. 34

At meetings of the Diocesan Council and the committees of the Diocesan Council, minutes must be kept in which are reported the names of the present members, reason for absence of those not present, remarks to the minutes of the previous meeting, announcements and correspondence which comes within the scope of their authority, issues which had been discussed and voted upon, the results of the vote and realized conclusions with notations as to how those present voted individually. The minutes must be signed by all present and excerpts of the minutes only by the secretary with the seal of the Diocesan Council.

Art. 35

Grievances submitted within the prescribed time limit against the decisions of the committees of the Diocesan Council will be decided by the Diocesan Council in plenum.

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Jurisdiction of the Diocesan Council

Art. 36

General Duties are as follows:

1) To see that church-school congregations, monasteries and all its organs perform their duties correctly and conscientiously;

All liens against church-school congregation property (Mortgages) must be previously approved by the Diocesan Bishop, i.e. the Diocesan Council; in regard to incurring debts in general, the church congregation may indebt itself only up to the sum of five hundred dollars without the consent of the Diocesan Council;

2) to prepare and submit necessary regulations, orders, instructions and decisions in this respect and in the matters of all executive and religious-educational needs of the diocese;

3) to prepare and submit to the Diocesan Church-National Assembly, recommendations for various regulations and directives which are to be legislated by this body for the entire diocese;

4) to conduct the election of delegates to the Diocesan Church-National Assembly in accordance with the rules of this Constitution;

5) to decide in the matters of the Diocesan income and assessments;

6) to set up its own agenda;

7) to create funds required for the entire Diocese;

8) to receive and debate the reports of its committees-sections and to consider their activities and the status of the Diocese and to render appropriate decisions on the subject of said reports;

9) to debate the grievances submitted against the decions of the committees-sections of the Diocesan Council;

10) to submit recommendations, according to the need, to the Diocesan Assembly for the change and amendment of this Constitution;

11) to initiate and extend such tasks which it might consider to be generally beneficial.

Art. 37

In matters of administration and control:

1) to consult on all relations and needs of the Serbian Orthodox religious schools for religious education and to bring forth in that respect, necessary decisions and directives;

2) to prepare and submit regulations for the entire Diocese in regard to the religious-education in the church schools, teaching curriculum and disciplinary code for the teachers;

3) to supervise that the directives for school regulations and teaching curriculum are correctly carried out and that the prescribed religious-cultural school text books are widely used;

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4) to choose Diocesan religious-educational supervisors, if necessary, through whom supervision is exercised over all religious-educational institutions in the Diocese;

5) to receive reports from the said supervisors and formulate necessary decisions on same;

6) to receive an annual report from all its committees covering their work and to prepare an annual report from same of the entire work within the diocese and to submit it to the Diocesan Assembly;

7) to decide the organization and development of religious-educational schools for religious-cultural education and beneficial institutions in the Diocese.

I. Diocesan Religious-Educational Committee-Section:

Art. 38

In the jurisdiction of the activity of this committee-section, aside from the religious-educational activity, it should also decide:

1) grievances against decisions of the bodies of church-school congregations in matters of strictly educational and school character: to approve their decisions, i.e. to disapprove them whenever this Constitution proves cause for same;

2) to decide disputes arising between parish priests and church-school congregations and its organs insofar as same do not concern spiritual matters.

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3) to prepare recommendations for the Diocesan Council for directives, orders and regulations which pertain to the official activity of the lower organs of the Diocesan authorities and which relate to matters of school and education;

4) to submit to the Diocesan Council for approval, i.e. decision, its reports, findings and financial statements;

5) to execute the decisions and orders of the Diocesan Council;

6) to examine, approve and confirm the rules and decisions of the congregation insofar as it is within the scope of the Constitution;

7) to direct and send representatives for the purpose of investigating various improprieties of lesser bodies in church-parochial schools and to take adequate measures to eliminate various faults and insufficiencies in educational and school activities.

Art. 39

In administrative and controlling matters of religious schools for religious education, this committee-section is authorized to:

1) approve decisions made by church-school congregations to erect new schools;

2) to endeavor that school buildings be built in accordance with regulations, that they be furnished with the best of teaching material and that only qualified teachers be placed in same.

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3) to control that church-school congregations authorities fulfill their obligations punctually, submit their reports to the Diocesan Council regularly, statistical data and requests.

4) to confirm the election of teachers selected from church-school congregations and to issue to them their confirmations;

5) to judge in the disciplinary matters of teaching personnel in accordance with the disciplinary rules which the Diocesan Council will present;

6) to arbitrate and decide on differences between teacher, clergy and school-church congregations and their bodies insofar as they touch upon school and teaching relations;

7) to compile an annual report of the status of all its external and internal religious-educational institutions in the Diocese, which report will be published in the Diocese paper, and to submit same together with the propositions to the Diocesan Council;

8) to effect the decisions of the Diocesan Council insofar as they concern religious-educational activity;

9) to place substitutes in teaching vacancies until valid decision is final;

10) to maintain a list of all religious-educational institutions and teaching personnel in same;

11) to assume responsibility that the supervision of all religious educational institutions be carried out.

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II Financial-Executive Committee-Section

Art. 40

Of the members of this committee-section, the Diocesan Bishop in agreement with the Diocesan Council names to same, the Diocesan Treasurer and assistant treasurer. The treasurer of the Diocesan Council must be under bond, said bond being twice the amount of cash at the disposal of the Diocesan funds.

Art. 41

Also within the jurisdiction of the Financial-Executive Committee:

1) to maintain that regular inventories are kept of all real and personal property of the Diocese, church-school congregations, monasteries, funds (beneficiencies) which can be included in same;

2) to control the status, handling and usage of those funds (beneficiencies) and property which are directly supervised by the school-school congregations and monasteries;

3) to examine the submitted final financial statements for the past year and to approve church-school congregation and monastery budgets for the subsequent year;

4) to handle directly and under the supervision of the Diocesan authorities, the funds (beneficiencies) which serve the church-religious educational and humanitarian aims of the entire Diocese and monastery in the Diocese.

5) to supervise over all Diocese property and beneficiencies.

6) to check and keep in its file, one copy of the property inventory of the church-school congregations, monasteries and Diocese.

Diocesan Ecclesiastical Court

Art. 42

The Diocesan Ecclesiastical Court is comprised of the Bishop as president, four regular and three alternate members.

The regular members and alternate members of the Diocesan Ecclesiastical Court are appointed and relieved of duty by the Bishop.

Art. 43

Members of the Diocesan Ecclesiastical Court may be clergy of both orders but they cannot be related amongst themselves or with the Bishop to within four degrees of canonical computation, be it blood relationship or through marriage.

Art. 44

The Diocesan Ecclesiastical Court maintains its own legal counsel when necessary, who is at the same time the defender of marital unions when necessary, who is at the same time the defender of marital unions and attorney of the Diocesan Council, namely the Diocese. He must have legal training (bar admission) to practice in the country-state, and he is appointed by the Bishop of the Diocese in accord with the Diocesan Council.

Art. 45

The members of the Diocesan Ecclesiastical Court, regular or alternates, as well as its clerks (including the at-

torney) swear an oath to the Diocesan Bishop which is as follows:

"I (N.N.), swear to Almighty and All-Knowing God, that I will fulfill all duties and activities entrusted to me carefully and conscientiously without any objectives, that I will, before the enaction of any decision, most zealously uphold all the laws and canons which relate to the subjects of the office entrusted me and that I shall guard official secrets most honorably. So help me God".

This oath must be personally signed by each member and submitted to the Diocesan Bishop.

Art. 46

The president of the Diocesan Ecclesiastical Court is the Diocesan Bishop; should be not be available, he transfers the administrative work to his representative in accordance with Art. 13 of this Constitution.

Art. 47

The meetings of the Diocesan Ecclesiastical Court are held as required at the invitation of the Diocesan Bishop. All regular members must be invited to the meetings as well as the required member of alternative members and the latter, if possible, should be from the immediate vicinity of the Diocese seat.

Art. 48

The members of the Diocesan Ecclesiastical Court are not authorized to meet at meetings of the Ecclesiastical Court without the knowledge of the Diocesan Bishop or his appointed substitute.

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Art. 49

The Diocesan Ecclesiastical Court may always make valid decisions at its meetings, if two-thirds of its membership is present.

Art. 50

Meetings of the Diocesan Ecclesiastical Court are not public. If a case involves one of the members or his family or relatives to within four degrees of relationship, he must leave the meeting until the case is settled.

Art. 51

A motion, approved by all members or their absolute majority becomes valid and should immediately be pronounced as such when the Bishop approves it.

If the vote is tied, the motion endorsed by the Diocesan Bishop, i.e. his representative, becomes the valid decision. If the vote is entirely deadlocked, the Bishop calls a new hearing at the next nearest meeting.

Art. 52

At each meeting of the Diocesan Ecclesiastical Court, the Diocesan secretary (Bishop's secretary) take minutes which include the names of the members present as well as those absent and their names, common to the minutes of the previous meeting, announcements and correspondence which come within the jurisdiction of the Diocesan Ecclesiastical Court, subjects discussed and voted upon, results of vote and final decisions with notations indicating how all present voted.

The minutes must be signed by all members present and the excerpts from the minutes only by the secretary.

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Art. 53

Decisions made by the Diocesan Bishop alone or together with the Diocesan Ecclesiastical Court, have the validity and power of decrees of Ecclesiastical Courts in the first instance. The highest and final instance is the Holy Bishop's Synod.

The Diocesan Ecclesiastical Court decides matters of divorce in the first and final instance, except in the cases of marriage annulments or on appeals of a decision of the Diocesan Ecclesiastical Court in which case the Holy Bishop's Synod is the final instance.

Art. 54

All decisions pertaining to the unfrocking of priests or presbyter-monastics are made not only by reason of complaint but also by official duty, to the Holy Bishop's Synod for consideration and final decision.

Art. 55

The jurisdiction of the Diocesan Ecclesiastical Courts:

1) to see that the teaching of the faith is preserved intact and that the church rituals are maintained in their entirety;

2) to see that priests and presbyter-monastics perform their duties both in and out of the church and that the religious-moral life of the clerics and people coincide with church regulations;

3) to provide instructions for religious education in general, to be informed through contact with its bodies

on the religious-moral situation of the people and Serbian Eastern Orthodox children in all schools;

4) to arbitrate and decide upon differences arising between archpresbyters, priests and missionaries, insofar as they relate to their spiritual service and official relations;

5) to judge in all disciplinary matters which relate to church discipline and order of the clerics and people and also in the matters relating to the performance of the Holy Sacraments and marital matters;

6) to, if necessary call for plenishment of vacant parishes;

7) to engage, in accordance with this Constitution, in the organization of new, dissolvement of old or other reorientated existing church-school congregations, parishes, archpresbyterates, monasteries, and in the designation of their headquarters;

8) to formulate directives for the official activities of district archpresbyterates insofar as the directives relate to their spiritual stewardship and to see that the church-school congregations, parishes fulfill their obligations in matters designated within their jurisdiction;

9) to assume responsibility that all new churches are built in accordance with Orthodox rites, that they are consecrated according to regulations, that they are furnished with service books, materials and essentials and that church cemerteries are consecrated and properly fenced;

10) to maintain that correct inventories are kept listing church vessels; orders a list of all churches, parochial and monastic clergy and the number of christian souls and homes and that all are entered in special books;

11) to see that official church records and generally all that is necessary for parish life (monastery) as well as prescribed books and minutes, are kept in order and according to regulations.

12) to submit an annual report of its work to its Diocesan Bishop who will publish it in the official organ each year.

Art. 56

Court procedures and order of business of the Ecclesiastical Court will be prepared by the Ecclesiastical Court itself with the approval of the Holy Bishop's Assembly of the Serbian Church.

If the Bishop should disagree with the decision of the Diocesan Ecclesiastical Court, as well as with the decision of some Diocesan committee or Diocesan Council, the matter in question will be sent to the Holy Bishop's Synod of the Serbian Church for final decision.

Fourth Part

LOWER DIOCESAN ORGANS

I. DISTRICT ARCHPRESBYTERS AND ARCHPRESBYTERATES

Art. 57

District archpresbyterates are a group of more church-school congregation-parishes which are under the spiritual supervision of one and the same district archpresbyter.

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Art. 58

Each Serbian Orthodox School-Church congregation-Parish which exists or which is to be organized in this country, must be in canonical unity with one of the existing district archpresbyterates.

Art. 59

The present district archpresbyterates, their headquarters and their boundaries remain intact for the present but in the future the changes in this respect will be made only after a hearing of the Diocesan Council and the Diocesan Ecclesiastical Court, the interested clergy and people, the decision of which will be based solely upon the interests of the church and church welfare.

Art. 60

Accordingly, there exists and shall exist until further decision, three district archpresbyterates: eastern, central and western.

Art. 61

District archpresbyters are spiritual heads of one archpresbyterate, appointed permanently in a valid manner, and furthermore, as a confident of the Diocesan Bishop and Diocesan Authorities is authorized in their behalf and at their request to effect all spiritual supervision over clergy, people and all church and religious-educational institutions of his district and in this respect is elevated in rank to archpresbyter and appointed.

Art. 62

The vacated position of an archpresbyter must be filled within six months after said vacancy occurs.

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A temporary substitute is appointed by the Bishop in agreement with the Diocesan Ecclesiastical Court.

To fill the vacancy of the position of an archpresbyter, the Diocesan Ecclesiastical Court candidates three clergymen, pastors of this Diocese who have passed the prescribed examinations insofar as they were not exempt from same and who have as clergy fulfilled parish duties and from amongst whom the Diocesan Bishop will name a permanent archpresbyter.

Art. 63

The church-jurisdictional position of the district archpresbyters includes the following rights and obligations, namely:

1) He is a mediator between the Diocesan Ecclesiastical Court and the district parish offices and in general all the territorial clergy and people: in exclusive spiritual matters and as such if obligated to announce the orders, decisions and rules of the Diocesan Ecclesiastical Court to the parish offices as well as to submit petitions, grievances and in general all requests of the above mentioned to the Diocesan Ecclesiastical Court with all his remarks, reports and eventual propositions;

2) he is the controlling organ of the Diocesan administration in all its activities of the clergy and people, parochial offices and church-school congreations in spiritual and administrative matters, and all church and religious-educational institutions of his district; consequently, his duty is to make annual canonical visitations in his district in accordance with the rules of this Constitution and instructions of his Diocesan Bishop and competent Diocesan

authorities and to submit a report on each occasion to the Diocesan administration.

3) he is the investigating organ of the Diocesan administration in all church corrective and disciplinary matters as well as in the executive matters of his district clergy, teachers and faithful and church-school congregations and their organs and the parochial offices insofar as the Diocesan Bishop and competent Diocesan authorities would not entrust the same duties to another as its special representative.

4) he is the executive organ of the Diocesan administration and, therefore, it is his duty to execute orders, decisions, rules and decrees of the Diocesan administration in his district, i.e. all responsibility for same to be fulfilled by all who are bound to do same.

In order that district archpresbyters might correctly fulfill these specific duties of their office, the Diocesan Bishop together with the Diocesan Ecclesiastical Court and Diocesan Council will compile specific instructions and publicize same for the knowledge and acceptance to all the clergy, school church congregations and parishes.

Art. 65

District archpresbyters maintain separate offices and have a special archpresbyterial seal with lettering reading: "Serbian Orthodox Archpresbyterate Office N.N." encircled and the image of St. Sava in the middle.

Art. 66

The district archpresbyters in their official capacity are under the supervision of the Diocesan authorities and they

are duty-bound to submit in all matters without exception, to the prescribed laws and directives.

Fifth Part

Church School Congregations

Art. 67

A Serbian Orthodox Church-School Congregation is a community of Serbs who profess the Orthodox faith and live in one or more localities which are bound together and which comprise geographic and administrative unity according to the laws of this country.

Art. 68

Each Church-School Congregation is considered an integral part of the Serbian Orthodox Diocese in the Northern United States of America and Canada and as such is subpect to all the statutes of this Constitution church canons and other regulations, rules and orders of the Diocesan authorities headed by the Diocesan Bishop.

Art. 69

The aim and purpose of the Church-School Congregation is to uphold maintain and promote the church, school and all institutions which benefit Serbianism and Orthodoxy and to work towards the promotion amongst the members of same, fraternal love and unity and useful citizens of this country, mutually helping one another in the moral and spiritual development of the fulfillment of the purposes of the Serbian Holy Orthodox Church.

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Art. 70

Members of the congregation are only those Serbs who have voluntarily assumed upon themselves the duties and burdens prescribed by the church school by-laws and have thereby achieved the right to actively participate in the work of the Church-School Congregation.

Art. 71

Any person who desires to become a member of the congregation reports to the congregation board which either accepts or rejects him by a majority vote. Persons not admitted to membership or when they are expelled from same, are entitled to grievance to the Diocesan Council within thirty days from the day the decision of the Church-School Board was submitted unto him. The decision of the Diocesan Council is final and obligatory for both sides on this grievance.

Art. 72

Persons not abiding with the statutes of the church-school by-laws are considered only as parishoners, i.e. subject of the church and do not enjoy those rights which pertain only to the members in accordance with the by-laws of the Church-School-Congregation.

Art. 73

The following cannot be members of a Church-School Congregation:

1) persons under eighteen years of age;

2) persons who are proven to have scandalized others by their immoral conduct and life;

3 persons who can be proven to work against the church, Diocese and Orthodoxy;

4 those, who openly admit and who can be proven to be anarchists, communists, nihilists and bigamists.

Art. 74

Each new member of the Church-School Congregation must take an oath that he will be obedient to all the statutes prescribed by the Church-School by-laws, Constitution of this Diocese and the orders of the Diocesan authorities.

Conditions for the Organization of Church-School Congregations

Art. 75

The following conditions are essential in the organization of a Church-School Congregation in one locality:

1) Petition to the Diocesan Bishop, signed by all who wish to organize a church-school congregation in which they obligate themselves to support same both materially and morally;

2) Proposal of the church-school by-laws, which must be composed in accordance with this Constitution and approved by the Diocesan authorities;

3) Petition for the establishment of a necessary fund to purchase land for the building of a school and church on same, and

4) submission of estimates and plans for the building of the church and school.

CONSTITUENTS

Art. 76

The Church-School Congregation are governed by these organs:

1) Assembly of Church-School Congregations;

2) Executive Board;

3) Controlling Board;

4) Priest-rector;

5) Tutori (wardens) of the church.

Art. 77

The assembly of the Church-School Congregation is comprised of all members in good standing.

Art. 78

Those persons, who on the day of the assembly become members, do not have the right to vote at said assembly.

Art. 79

The regular annual assembly of the Church-School Congregation is held annually on the day designated by the by-laws of the Church-School Congregation. The election of the new board must be submitted to the Diocesan Bishop, i.e. to the Diocesan Council within fifteen days of the date of the assembly for the Diocesan statistical records.

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Art. 80

The agenda for the annual assembly is set forth by the Executive Board of the Church-School Congregation and must be strictly upheld by the presidium of the assembly. In the event that certain unforeseen questions and proposal should arise in the agenda, the president of the assembly can incorporate them only under the item "questions and proposals" and discuss them as such and bring forth decisions concerning them.

Art. 81

The Executive Board is obliged to set the day of the calling of the assembly one month in advance and if possible, publicly announce the agenda.

Art. 82

The president of the Executive Board opens the assembly and calls upon the members present to elect the presidium as follows: president, vice-president, secretary and two members to verify the minutes.

Art. 83

On opening the assembly and the election of the assembly presidium, the procedure follows in accordance with the agenda. Upon submitting the reports of the activities of the Executive and Controlling Boards and the acceptance of these reports, and the same Boards are relieved of their duties, the election of a new board is conducted as well as all other items designated in the agenda.

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Art. 84

Immediately following the election of new officers of the congregation they are obliged before continuing with the agenda, to take an oath before the priest and in the presence of the entire assembly, that they will perform their duties conscientiously and honestly, always keeping in mind first the interests of the congregation and their Diocese.

Art. 85

Included within the jurisdiction of the activities of the assembly are:

1) election of the presidium of the assembly;

2) submission of the reports of the activities of the retiring boards;

3) release of the old boards;

4) election of the new boards;

5) all matters which do not pertain to the jurisdiction of the activities of the church-school board;

6) the question of salaries and income of the priest and teacher;

7) questions of church-school economy;

8) questions and proposals.

Art. 86

All misunderstandings and disagreements which might arise in the course of the year between the priest and teachers on one side and the Board of Church-School Congregation on the other side, must be submitted for

consideration to the Diocesan Council. The Diocesan Council through its official Diocesan organs will investigate and study the matter and submit its decision to the Board. The decision of the Diocesan Council is final.

Art. 87

In the event that some more important questions should arise during the course of the church-school year which the church-school board is not authorized to decide and it is evident that its decision cannot be postponed until the regular annual assembly, the Board of the church-school congregation will call a special assembly which can decide only upon the matter for which it is convened.

Art. 88

At the demand of one-third of the members of the Church-School Congregation, the Board is obliged also to call a special assembly as well as if same is demanded by the Diocesan authorities.

Art. 89

All decisions of the regular and special assemblies are made by the relative majority of members present. In the event the vote is tied, the vote of the president decides.

Art. 90

Any member who abuses his privileges as a member of the Congregation by creating disorder and obstructing the procedure of the assembly, can be barred from the meeting by the presiding officers at the assembly.

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Art. 91

The assembly may be opened and validly render decisions provided a relative majority of its members in good standing are present.

Art. 92

If at the first call to the assembly a relative majority of members in good standing fail to be present, a new assembly shall be called within fourteen days which may render valid decisions if more than one-third of the members in good standing are present.

Art. 93

If at this second call the required number of members fail to be present (more than one-third) the minutes on same are composed and signed by the president, priest and all present members and are then submitted to the Diocesan Council which will bring a decision on further procedures.

Art. 94

Should the assembly of the Church-School Congregation over-step the boundaries of the jurisdiction and intentionally prevent the execution of the directives of the Diocesan authorities, the Diocesan authorities are empowered to annul such decisions and to entrust the governing of the said Church-School Congregation further to the retired board and only then issue permission to call a new assembly when the Diocesan authorities receive sufficient evidence and guarantee from the membership that that assembly will be conducted in peace and in the manner prescribed by the Diocesan Constitution and the church-school by-laws.

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EXECUTIVE BOARD

Art. 95

At the head of the Church-School Congregation is the congregation administration which is comprised of the Executive and Controlling Boards.

Art. 96

The Executive Board consists of: president, vice-president, secretary, treasurer, financial secretary, two tutors (wardens) and the necessary number of committee-men.

Art. 97

The Executive Board is elected by the regular congregation assembly according to the prescribed statutes for a period of one year.

Art. 98

The priest is a member of the Executive Board by virtue of his position.

Art. 99

The regular meetings of the Executive Board are held once a month and special meetings whenever the need arises.

Art. 100

The meeting is called by the president who decides and composes the agenda. The president is compelled to call a meeting at the demand of one-third of the members of the executive board.

The meeting is opened and closed with prayers read by the parish priest.

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Art. 101

The decisions of the Executive Board are valid when all members are duly called and when the relative majority is present (one over one-half) of its members. In the event that at the first calling not more than half of the members are present, the meeting is called again within seven days when one-third of the members can render valid decisions. In the event that this time not even one-third of the members are present, the president is obliged to summon a special assembly within fourteen days at which he must bring up the question of the trust to the Executive Board.

The Executive Board is obliged in its entire work and in its decisions to strictly uphold the statutes of this Constitution and By-Laws of its Church-School Congregation as well as all the directives of the Diocesan authorities. Jurisdiction of the Executive Board is:

1) to decide the date and place of the calling of the Church-School Assembly;

2) to examine the roster of congregational membership;

3) to prepare proposals for the Church-School Assembly dealing with all matters which fall within its jurisdiction of activities;

4) to execute the decisions of the Assembly and the directives of the Diocesan authirities;

5) to inventory all real estate and financial funds of the congregation in two copies, one of which is sent to the Diocesan authorities;

6) to govern and handle with the entire real estate and financial funds of the congregation and to care for its maintenance;

7) to satisfy all the needs of the congregation, church, school, and etc. relating to this;

8) to determine the means of acquiring funds for the building and repair of the church, school, parish home, and other useful buildings; to submit proposals for and in that respect together with plans, building estimates and expenses to the Church-School Assembly for approval.

9) to propose to the assembly the manner of paying the priest, teachers and other personnel and to see that the same receives the prescribed salaries on time and in the prescribed manner;

10) to decide as to whether certain demands of the congregation shall be rejected as impossible to achieve; whether a law suit shall be started, continued, abandoned or an agreement with the opponent reached; whether certain contracts in the name of the congregation should be concluded, continued, broken or rejected, and whether anything should be purchased from congregational funds;

11) to name an attorney for the Church-School congregation in case of law suits;

12) to take care of the congregation library, organization lecture socials and entertainment;

13) to assist the priest and teachers in the religious and moral education of the people in order that bad,

morally and materially harmful habits and customs be eradicated;

14) to submit recommendations pertaining to the Orthodox Church and school; to preserve and defend the honor and dignity of the Church and Church-School Congregation;

15) to awaken and maintain in the colony love, zeal and sacrifice toward the Serbian Orthodox Church and School;

16) to represent the interests of the church and school through the president in all her external relations with outside individuals and authorities;

17) to recommend to the Board, a plenishment for teachers and priest with the approval of the Diocesan authorities;

18) to inspect the congregational school buildings as often as is necessary to assure of the exterior and interior conditions, orderliness, cleanliness; to take care of the health conditions of the school children, that they be well-behaved both in and out of school;

19) to endeavor that the teaching personnel performs its duties and to aid them in all their duties especially in enforcing proper discipline among the school children;

20) to propose that the Board decide on dismissal of children due to disorderliness;

21) to take care that the children be trained in church music and educated in the spirit of the church and Orthodox faith and in Serbian nationalism;

22) to attend school examinations and celebrations and that good students should be awarded for their achieved success, that the school is well supplied with the necessities and to care for the material needs of the school and education.

President of the Congregation

Art. 102

The president of the congregation is its lawful representative and substitute before the authorities, both civil and ecclesiastical. He receives and opens congregation correspondence, calls committee meetings, opens and closes them, maintains order and peace at same; proposes matters for discussion, brings them to a vote and announces results. He takes care that at all meetings during discussion, the agenda is strictly upheld. The president has the right to admonish and if necessary, to refuse the floor and to reproach any speaker who disagrees from the subject discussed or who speaks on matters irrelevant to the agenda, who does not conduct himself decently, insults established authorities or persons. In cases of disturbance or disorder he shall recess the meeting and if peace and order is not restored after that, he shall adjourn the meeting.

Vice-President

Art. 103

The vice-president shall substitute for the president in all matters should the latter be unable to perform his presidential duties. In the event that the president is absent and cannot preside at a meeting which he called and he has not previously advised the vice-president of same, the

vice-president is authorized to preside over the meeting without his consent.

SECRETARY

Art. 104

It is the duty of the secretary to keep the minutes of the board meetings and to conduct all correspondence of the congergation which he signs together with the president. He keeps a record of the activities, preserves the files and issues membership books.

TREASURER

Art. 105

The treasurer, tutors (wardens) and the financial secretary receive according to the inventory, all the real estate and financial property of the congregation and they handle same in accordance with instructions and decisions of the Executive Board and Diocesan authorities and in accordance with the laws of the Diocesan Constitution and the by-laws of the Church-School. The treasurer is obliged to keep a record of all the income and expenditures of the congregation throughout the entire year. He receives money from the tutors (wardens) and other persons and deposits same in the bank; pays the salaries of the congregation's personnel and all other congregation disbursements. The treasurer, financial secretary and tutors (wardens) submit a report each six months regarding the status of the treasury and congregational property.

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Financial Secretary

Art. 106

The duties of the tutors (wardens) are to be present regularly in church at all church services and ceremonies; to receive money in church from the sale of candles and offerings and other contributions; to exercise care of all necessary items in connections with the church and church rituals. They shall transmit all monies received to the treasurer each Sunday.

Parish

Art. 108

The Serbian Orthodox Parish is a union of all Serbs, who profess the Eastern Orthodox Faith, live in the said place and vicinity and have one and the same parochial church and within spiritual boundaries belong to one and the same priest. Only one parish can exist on the territory of the said congregation. Change of this status can only be decided by the Diocesan Council.

Art. 109

Each parish has its parish office, its separate vital statistics books and other prescribed parochial records and books, its own parochial seal with the image of the church patron saint in the middle encircled with the following inscription; "Serbian Orthodox Church in N.N.".

Art. 101

The parish seal is safe-guarded by the parish priest and all official records, correspondence, and documents must be issued with that seal affixed. The congregational seal, however, is handled by the president of the congregation.

Appendix F

Priest-Head of Parish and Teachers

Art. 111

Candidates for ordination in priestly order can be persons who completed a theology school, of good behaviour and who possesses all the qualities prescribed by the canons.

Art. 112

The parish priest is considered as such by regular, lawful and permanent appointment and approval for the assigned parish by the Diocesan Bishop; he is the head of the parish church; stands for and is responsible for all the work in same.

Art. 113

The parish priest is assigned by the Diocesan Bishop temporarily or is elected as priest by the Church-School Congregation by plenishment and confirmation of the Diocesan Ecclesiastical Court. Temporary parish priests are assigned to those parishes where circumstances demand temporary character as for example the uncertainty that the Church-School Congregation could support a priest permanently or where for some reason, the Church-School Congregation itself is against a permanent priest, or where official Diocesan authorities, for justified reasons, detain the election of a priest.

Art. 114

The post of parish priest is vacated by:

1) death of the parish priest;

2) transfer by request, Ecclesiastical Court decrees, or by call of duty;

3) loss of position on the basis of valid sentence of qualified Diocesan authorities; and

4) regular resignation of position.

Art. 115

The vacant post of the parish priest is filled as soon as possible from the date of vacancy by the publication of plenishment and confirmation by the Diocesan Bishop. On publication of plenishment, the candidates send their application together with the original certificate of completed theology school and successfully completed theology examinations, i.e. with attached "sindjelija"—the gramata of ordination, to the Diocesan Bishop who examines the qualifications and approves those for election who have the necessary qualifications for same.

Art. 116

A priest is elected by the majority vote of the Church-School Congregation and the approved election of the Diocesan Bishop, from among those candidates who within the prescribed time submitted their petitions for certificate.

Art. 117

The Church-School Congregation is not authorized to discharge the priest or to bring another in his place without the knowledge or permission of the Diocesan Bishop.

Art. 118

The priest cannot resign his parochial duties without the consent of his Diocesan Bishop and the knowledge of his Church-School Congregation. He can leave his parish

with the approval of the Diocesan Bishop, only after having given at least a month's notice and after having surrendered the parochial office and church to the congregation in the prescribed manner.

Art. 119

A priest is obligated before leaving the parish, to surrender in utmost accuracy to the parish board, the statistical books, all other parish church books and articles which are the sole property of the Church-School congregation and which are in no respect the property of the individual priests.

Art. 120

The parish priest in his work is under the direct control of his Diocesan Bishop who performs this control personally through his Diocesan organs. Consequently, he is exclusively responsible for all his actions to his Diocesan Bishop and the Diocesan Ecclesiastical Court.

Art. 121

All grievances and accusations by the Church-School Congregation and individuals against the parish priest must be submitted to the Diocesan Bishop for his review and he, according to his own discretion and his designated rights, decides the matter himself or submits it to the Ecclesiastical Court for further action.

Art. 122

The priest is obliged to submit to his Diocesan Bishop and to the Diocesan Ecclesiastical Court all controversial issues with the Church-School Congregation and to obey their decisions.

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1) in the event of a disagreement between the parish priest and the church congregation, the issue is decided by the Diocesan Council. Should investigation prove that the priest is guilty, he is to be transferred from the parish or punished by the Ecclesiastical Court.

If found, however, that the Church Congregation is at fault, the Diocesan Council must decide that the priest remain in the parish. However, if the Church Congregation does not submit to the decision of the Diocesan Council, the parish priest is to be transferred and the Church Congregation, because of its guilt remains without a priest until such time that it agrees to accept the same priest;

2) in the event of disagreement between the priest and teacher or between the priest and the congregation; or between the teacher and the congregation; or between the congregation and the priest, or between the congregation and the teacher; or between one or more groups, full-pledged members of the congregation and board, they, each party composes its grievance and signed by at least 10-15 full-pledged members of the congregation submits same at the first following meeting of the Executive Board of the congregation where both grievances are alone read, are then submitted to the president of the congregation who in turn immediately sends them to the Diocesan Council. The registration of mail receipt must be pasted onto the minutes in which a record is made that the grievances were read and sent to the Diocesan Council for decision.

Art. 123

The parish priest must not perform any rituals in another parish without the consent of the priest concerned

or without orders from the Diocesan Bishop in exceptional cases.

Art. 124

The Church-School Congregation, however, must not permit any of its members or parishoners to willfully bring in a priest from outside the parish to perform priestly services. In the event that such a member or parishioner transgresses this regulation, the congregation is obliged to take all possible measures to punish him for violation of order and discipline.

Art. 125

The parish priest may take leave only with permission of the Church-School Congregation and Diocesan Bishop. In the case of a one week leave, he finds a substitute for himself, preferably a Serbian priest. In case of a longer leave, he requests a substitute from the Bishop. This question, further, the priest is obliged to regulate mutually with his substitute in accordance with the By-Laws of their respective Church-School Congregations.

Art. 126

The duties of the parish priest are:

1) to perform all the Holy Sacraments and rituals in the church as well as in the parish and always in strict accord with regulations and canons of our Orthodox Church and its rules;

2) to teach his parishioners and youngsters of both sexes, at all opportune times, the principles of faith and christian morals;

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3) to preach on every holiday and if possible to speak upon request at public gatherings and socials;

4) to keep church records of births; marriages and deaths and other prescribed parish books in accordance with the instructions of authorized Diocesan authorities;

5) to issue excerpts from these books in official form and with the affixed parish seal, which as such have the validity of official documents;

6) to endeavor that parishioners, if there is no church or school in the parish, erect same within their financial limitations;

7) to endeavor that the church and school interior, church utensils and the around the church and school are kept clean and orderly.

Art. 127

The duties and the functions of the priest include both the religious-moral as well as the educational spheres, as long as the priest in America by the power of circumstances, is compelled to perform both his priestly and instructive duties simultaneously.

Art. 128

As a teacher, the priest is obliged to conduct his parochial school, if possible twice a week and to teach the children catechism, reading, writing, geography, history and church singing.

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Art. 129

In those congregations having more than 150 homes, the priest is not obliged to conduct complete teaching duties but only to teach religion and church singing to children two hours weekly. Such a congregation is required to obtain its own regular teacher.

Art. 130

Teachers are elected by the Church-School Congregations by plenishment, the same as priests and the election is approved by the Diocesan Council. As far as a vacancy of this post is concerned, substitution, vacation or sivk-leave, the same regulations apply as in the case of priests.

Art. 131

A candidate for teacher can be a person who completed a teaching or other recognized school, is of good conduct, Serbian or Orthodox Faith and has all the qualifications of an educated worker and pedagogue.

Art. 132

The relationship between the priest and teacher must be such as to serve as an example to all members of the Church-School Congregation and parishoners.

Art. 133

All misunderstandings and disagreements which could arise between the priest and the teacher and which they themselves cannot solve, are submitted to the Diocesan Bishop, i.e. to the Diocesan Council for consideration and decision.

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Art. 134

The teachers will follow the teaching curriculum and use the textbooks and other instructive methods which the Diocesan Council will prescribe by special rule.

Art. 135

The school work of the priest and the teacher is subject solely to the supervision of the educational supervisor or special representative from the Diocese but never by the Church-School Congregation which is unauthorized to do so.

Art. 136

The Church-School Congregation is obliged to protect the honor and the dignity of its priest and teachers and accordingly must not demand anything in their service or work which would belittle and lower their dignity and authority before our people, the Americans and other outsiders.

Art. 137

The priest is not obliged to walk at funeral processions and parades because it is unpractical as well as dishonorable in the eyes of Americans and others.

Art. 138

The priest aside from his regular salary agreed upon with the Church-School Congregation, is entitled to the following sources of income:

1) from each excerpt from the record books of births, marriages, and deaths, the sum of $2.00.

2) from the blessing of water and cutting of the Slavski Kolac the sum of $2.00.

3 for announcement of marriage bans, the sum of $1.00 for each announcement.

4) for requested prayers, the sum of $1.00.

5) for the blessing of new homes, the sum of $5.00;

6) for requiem (parastsos) services, the sum of $2.50 from members and $5.00 from non-members;

7) voluntary offerings from the blessing of homes during the Theophany season.

Art. 139

The priest is obliged to conduct without compensation, the following services and obligations;

1) regular church rituals and services;

2) processions with evening services, carrying of the Cross and the blessing of the Holy Water;

3) special general rituals and services:

a) on general national festive days;

b) general thanksgiving services and prayers at the beginning and close of the school year;

c) general thanksgiving services and prayers which are ordered by the higher spiritual authorities, according to need (in teims of epidemics or in any other general necessity);

d) memorial service to deserving deceased for the Fatherland;

e) twice annually (memorial service) for all deceased as prescribed by the church;

f) blessing of the water on the Day of the Holy Cross and Theophany in the church or in the river;

g) myrrh annointment and confession.

Art. 140

Fees for the main parochial rites: batism, marriages and funerals are determined by the Church-School Congregation according to the By-Laws of the congregation and the circumstances in the parish. Which part, if any, of this fee will go to the priest will be regulated by each individual church congregation in agreement with its priest.

Art. 141

The regular monthly salary of the priest and teacher is determined by the Church-School Congregation for each year in advance in agreement with the Diocesan religious-educational section.

Art. 142

The Church-School Congregation is obliged to place at the priest's disposal, a parish home which is furnished with heat, electricity and telephone. In the event that the congregation does not have a parish home, it assigns to the priest an agreed allowance in lieu of the parish home.

Art. 143

The Church-School Congregation cannot decrease the salary of the priest and teacher without the consent of the Diocesan Bishop and Diocesan Council.

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Art. 144

In case of the illness of the priest or teacher and the physician forbids him to leave his sick-bed, the Church-School Congregation is obliged to pay his wages for the month in which case the Diocesan Bishop names a substitute. The priest substitute gives all the additional income from the rights and sacraments to the congregation of the ill priest. If the illness is prolonged for more than one month, the congregation stops his wages and informs the Diocesan Bishop of same, i.e. the Diocesan Council, who in turn decide the question of replacing the ill priest. In the event of the death of the priest, i.e. teacher, the Church-School Congregation cannot deprive his family from remaining in the parish home with furnished utilities for a period of one month.

Sixth Part

PROPERTY AND FUNDS

(A) I DIOCESAN PROPERTY

Art. 146

Under the heading of Diocesan property is included that property which is owned by the Diocese and under Congregation property is included that property owned by the Church-School Congregation.

Art. 147

The property of the Church-School Congregation in individual colonies belongs exclusively to the said congregation without Diocesan rights to same. Only in the event of request by the membership of said congregation, does the Diocese have the right to control same.

Appendix F

Art. 148

Exact inventories must exist for all of the above mentioned property, composed by organs authorized to supervise them, one copy of which should be sent to the Diocesan Council for safe-keeping. The inventories must be corrected and in accordance with the actual status of the property brought up-to-date at the end of each year.

Art. 149

The above mentioned property and its assets are to serve exclusively for the purpose designated by the statutes of this Constitution and cannot be used for any other purpose.

Art. 150

Real estate must be registered with the land registrar; the diocesan in the name of the Diocese and the congregational in the name of the Church-School Congregation who are the owners.

Art. 151

Houses, churches and other buildings must be insured against fire damage.

Art. 152

The authorities handling the above mentioned properties must always maintain same in good and usable condition and are responsible for any damage which might occur at their fault, carelessness or negligence and will be responsible by law and in accordance with the decision of the Diocesan Council.

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2. Church-School Congregation Property

Art. 153

The Church-School congregation property is all that property without exception acquired by individual congregations with their material means. The Church-School property serves the church, school, educational and humanitarian purposes of said congregation and particularly in the erection, maintenance and decoration of the local churches, for supplying same with the essential church items, books, icons, vestments, and other items required by the church for the erection and maintenance of parish homes, churches, and for the salaries for local priests, teachers and other church and school personnel according to the purposes for which the said properties are dedicated.

Art. 154

Direct supervision of the Church-School Congregation on property is made by the Church-School Congregation, and they serve for the church, school and religious-educational aims of the individual congregations and higher control is made by the Diocesan Council, i.e. Financial Executive Board.

(B) I Diocesan Fund

Art. 155

Under the heading of Diocesan Fund are all the funds and assets which the Serbian people of the entire Diocese, individually or collectively through their church-school congregations and other various societies and organizations should establish, increase and dedicate to the mutual necessities of its church and school for the religious and educational aims of the entire Diocese. All the income from the Diocesan property and various Diocesan institutions belong to this fund.

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The Diocesan funds are supervised by the Diocesan Council through its Financial Board-Section which should be constituted at the first regular meeting of the Diocesan Council.

Special church-school funds dedicated exclusively for the school and educational necessities, are supervised by the Diocesan Religious-Educational Board with a separate treasury.

Art. 156

All real estate and personal property of the St. Sava Monastery in Libertyville as well as the other Serbian Monasteries should they be organized, is supervised by the monastery's administration under the direct control of the Diocesan Bishop.

Art. 157

The Diocesan Council is obliged to set up a budget at its first meeting which would stand to support the entire Diocese and to appropriate sufficient means to realize same.

Art. 158

The income of the Diocesan fund will be obtained primarily through assessments and voluntary donations of all the clergy, Serbian Orthodox Congregations and organizations.

Art, 159

The Church-School Congregations are obligated morally to assume their monthly share of the regular maintenance of the Diocese, which will be assessed in accordance with the population and possibilities of said congregation, and they will, on the other hand, in accordance with their cir-

cumstances offer the best possible manner to meet with their obligations.

Art. 160

The Diocesan Council shall appeal to all Serbian benefactors and benevolent federations, societies and organizations, to designate a regular monthly contribution per member to the Diocesan fund for the maintenance of the Diocese.

Art. 161

The Diocesan Council will designate specific persons periodically who will be authorized to collect voluntary donations in designated territories for the Diocesan Fund.

The income from all celebrations at the monastery in Libertyville belong to the monastery in Libertyville.

Art. 162

The Diocesan Council will endeavor to open, as soon as possible, a Diocesan supply store which will provide items for sale such as religious and educational books, candles, incense and all other necessities, all the income from same to be entered into the Diocesan funds. All income from Diocesan economy will be included in the Diocesan fund, when it is sufficiently developed.

2. Separate Funds and Pledges

Art. 163

Under the heading of Separate Funds are understood all those funds which in time private individuals or the Diocesan Council itself could organize and dedicate to the separate religious and educational aims of the Diocese as

a whole or for the individual Diocesan institutions and church-school congregations.

Under Pledges are to be understood all private bequests which are entrusted to the Diocese for handling and with special designated purposes.

The Diocesan Council is obliged to prescribe a separate rule for the handling of same at its first meeting following the organization of a separate fund or receipt of a bequest.

All Separate Funds and Bequests serve exclusively for the purposes designated and are not to be used for any other purpose.

If the purpose for which the specific fund or bequest was established is discontinued, The Diocesan Council shall suggest to the Diocesan Assembly that all these funds be used for other religious-educational aims.

All bequests are made by special wills in which detailed aims are outlined as well as the manner and usage of same. The will is to be composed and submitted in triplicate, one copy of which remains with the benefactor, i.e. his inheritors; one copy with the organ handling the bequest and one with the Diocesan Council.

The Diocesan Council is obliged to publicize monthly statements of the status of not only the general Diocesan Fund, but the status of the Separate Funds and Bequests as well.

APPENDIX G

(Excerpts from the Constitution of the Serbian Orthodox Church, Second Edition of the Holy Synod of Bishops, Belgrade 1957)

* * *

THE CONSTITUTION OF THE SERBIAN ORTHODOX CHURCH

"Since certain rules and regulations of the Constitution of the Serbian Orthodox Church of November 16th, 1931 were rendered powerless because of the changes in relationship of the Serbian Church toward the State, and in view of the grave consequences of the war and of the conditions which have arisen in the life and work of the Serbian Church, the Holy Assembly of Bishops of the Serbian Church made changes and amendments in this Constitution, which by reason of necessity are immediately applicable, as of the day of publication in the "Glasnik", the official journal of the Serbian Patriarchate, with the understanding that they be presented at the appropriate time to the Patriarchal Council through the Patriarchal Executive Committee."

CONSTITUTION OF THE SERBIAN ORTHODOX CHURCH

1. FUNDAMENTAL REGULATIONS

Article 1.

The Serbian Orthodox Church is one, undivided, and autocephalous. The Church confesses publicly its religious teachings, performs publicly its religious services, and governs and regulates independently all its religious affairs.

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Serbian Orthodox Church maintains dogmatic and canonical unity with all other Orthodox Churches.

Article 2.

The Serbian Orthodox Church has a rank of Patriarchate.

Article 3.

The following is a description of the coat of arms of the Serbian Orthodox Church:

Upon the patriarchal background of purple, it is decorated with a double-bar cross on the right side, and the archipastoral staff on the left, and in the center a shield topped with a bishop's crown; upon the blue upper half of the shield on the right side is the tower of St. Sava in Hilendar, and on the left side the monastery church of the Patriarchate of Ipek, both white in color; upon the lower white is a gold cross in the center with four equal sides, and upon each of the four spaces about the cross is a gold strike-a-light.

Article 4.

The official language of the Serbian Orthodox Church is Serbian with writing in Cyrillic. In exceptional and justified cases, a deviation from this regulation is allowed with regard to the language for internal use, in which cases the Holy Synod of Bishops makes a special ruling based upon this regulation.

The banner of the Serbian Orthodox Church is tri-color; red-blue-white, with a gold cross and strike-a-lights.

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Artice 5.

The legal persons in the Serbian Orthodox Church are these: Patriarchate, dioceses, church congregations, monasteries, foundations, independent institutions or such funds, and according to the designation, individual temples.

These legal persons may, in accordance with legal regulations, acquire and hold either personal or real properties, and have all the rights and obligations in that capacity.

Article 6.

The Serbian Orthodox Church independently governs and freely handles church property, church funds and memorial bequests (foundations), within the limits of this Constitution and state laws.

Church authorities independently decide concerning the acceptance of memorial bequests which are intended for church purposes.

The Serbian Orthodox Church independently exercises control of its incomes and disbursements.

The property of the Serbian Orthodox Church serves only the aims of the Church, nothing can be taken from it in any form nor used for other purposes, except in cases of expropriation provided in the law.

Article 7.

The Serbian Orthodox Church is governed on the basis of:

(a) The Holy Scripture and Holy Tradition according to the teaching of the Holy Orthodox Church;

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(b) Canons of the Ecumenical Councils and by them recognized canons of the Apostles, Regional Councils and holy Fathers;

(c) Decrees of the Regional Councils and Patriarchal Synods inasmuch as they were adopted by the Serbian Orthodox Church;

(d) Upon the regulations of this Constitution;

(e) Ordinances, by-laws and general rulings of the competent church authorities.

Article 8.

The order of the Serbian Orthodox Church is ecclesiastical-hierarchical and ecclesiastical-administrative.

Ecclesiastical authority, spiritual, church-disciplinal and church-judicial, in accordance with the canons and the order of the Serbian Orthodox Church belongs to the hierarchy solely. That authority the hierarchy exercises through its hierarchical representatives and organs.

The Pontifical authority with the clergy and laity through its administrative representatives and organs orders and manages matters pertaining to the properties, bequests (foundations), funds as well as to other matters foreseen by this Constitution.

Property right interests of the Church before the civil authorities and before the persons are represented by the eccliesiastical organs which are designated by this Constitution.

Article 9.

Church offenses and penalties are those which are prescribed by this Constitution according to the canons of the Orthodox Church.

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Article 10.

In the Serbian Orthodox Church there are the church-hierarchical and administrative authorities, bodies and organs;

1. Patriarch, Holy Assembly of Bishops and Holy Synod of Bishops, the Supreme Ecclesiastical Court. Patriarchal Council and Patriarchal Executive Board;
2. Diocesan Bishop, Diocesan Ecclesiastical Court, Diocesan Council and Diocesan Executive Board;
3. Bishop's District Deputy;
4. Pastor of the Parish;
5. Church-congregational Council and Church congregational Executive Board;
6. Abbot and the Monastery Brotherhood.

Article 11.

All ecclesiastical authorities, bodies and organs of the Serbian Orthodox Church have their seals with the Church coat-of-arms in the center, and inscription encircling it as follows:

1. The Archbishop of Pech, Metropolitan of Belgrade-Karlovci and Serbian Patriarch;
2. The Holy Assembly of Bishops of the Serbian Orthodox Church;
3. The Holy Synod of Bishops of the Serbian Orthodox Church;
4. The Supreme Ecclestiastical Court of the Serbian Orthodox Church;

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5. The Patriarchal Council of the Serbian Orthodox Church;
6. The Patriarchal Executive Board of the Serbian Orthodox Church;
7. Orthodox Bishop (Metropolitan) of the Diocese (N) in (M);
8. The Ecclestiastical Court of the Orthodox Diocese of (N) in (N);
9. The Diocesan Council of the Orthodox Diocese of (N) in (N);
10. The Diocesan Executive Board of the Orthodox Diocese of (N) in (N);
11. Orthodox Diocesan District of (N) in (N);
12. The Serbian Orthodox Parish of (N) in (N);
13. The Serbian Orthodox Church-congregation in (N);
14. The Serbian Orthodox Monastery in (N);

In case of necessity the titles under points 11, 13, and 14 of this article can be changed. This is decided by the Holy Synod of Bishops upon recommendation of the jurisdictional Bishop.

Dioceses, monasteries and other institutions, which have their historical seals may retain them in further use.

Article 12.

The Serbian Orthodox Church is episcopal. Its principal administrative division is into dioceses, both in regard to church-hierarchical and church-administrative aspect.

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Article 13.

At the head of the Serbian Orthodox Church is the Serbian Patriarch, as its supreme head. The title of the Patriarch is: The Archbiship of Pech, Metropolitan of Belgrade and Karlovci and the Serbian Patriarch.

At the head of each Diocese there is the Diocesan Bishop as its immediate head. He is, according to the church canonical regulations, the chief representative and leader of all church-spiritual life and church order in the diocese and he directs the dicoese assisted by his clergy and people.

Article 14.

These are the Dioceses in the Serbian Orthodox Church.

1. Belgrade—Karlovci, Archdiocese with its see in Belgrade;
2. Diocese of Banat with its see in Vrsac;
3. Diocese in Banja Luka with its see in Banja Luka;
4. Diocese of Bachka with its see in Novi Sad;
5. Diocese of Branichevo with its see in Pozarevac;
7. Diocese of Gornji Karlovac with its see in Plaski and Karlovac;
8. Diocese of Dabro-Bosnia with its see in Sarajevo;
9. Diocese of Dalmatia with its see in Sibenik, respectively Split;
10. Diocese of Zagreb with its see in Zagreb;
11. Diocese of Zahumjle-Hercegovina with its see in Mostar;

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12. Diocese of Zvornik-Tuzla with its see in Tuzla;
13. Diocese of Zletovo-Strumica with its see at Stip;
14. Diocese of Zhich with its see at Kraljevo (Zhicha);
15. Diocese of Nish with its see at Nish;
16. Diocese of Ohrid-Bitolj with its see at Bitolj;
17. Diocese of Pakratz with its see at Pakratz;
18. Diocese of Rashko-Prizren wits its see at Prizen;
19. Diocese of Skoplje with its see at Skoplje;
20. Diocese of Srem with its see at Sremski-Karlovci;
21. Diocese of Timok with its see at Zajecar;
22. Diocese of Crna Gora and Primorje with its see at Cetinje:
23. Diocese of Shabatz and Baljevo with its see at Shabatz;
24. Diocese of Shumadija with its see at Kragujevac;

Bishops of Dioceses in: Crna Gora-Primorje, Skoplje, Dabro-Bosnia, and Zagreb have by their rank the title of Metropolitans.

Article 15.

Besides the Dioceses enumerated in the previous article, in the matters spiritual and hierarchical, to the Serbian Orthodox Church also being these dioceses which are abroad:

1. The Serbian Orthodox Church in the United States of America and Canada, with its see in Chicago or in the Monastery of St. Sava, in Libertyville, Illinois;

2. Serbian Orthodox Diocese of Budim;
3. Parts of the Vrshatz and Temisvar Diocese outside the borders of Yugoslavia, with its see in Temisvar;
4. The Czech-Moravian Orthodox Diocese in Czecho-Slovakia;
5. The Serbian Orthodox Vicariate of Skadar with its see in Skadar (Skutari);
6. The Serbian Orthodox Churches, Church-congregations, and parishes outside the borders of Yugoslavia (Churches in the Diaspora).

Questions of the organizational, material and of other nature which emanate from the former relations with the Diocese of Budim (pt. 2), and parts of the Diocese of Temisvar and Vrshatz outside the borders of Yugoslavia, as component parts of the former Metropolitanate of Karlovci, will be decided by the Holy Assembly of Bishops in accordance with the need having heard the opinion of the Patriarchal Executixe Committee, and with the concordance with other competent factors.

Article 16.

The decisions concerning the creation, name, abolition, districting and the sees of the Dioceses, and (concerning) the creation and abolition of the positions of the Suffragan Bishops are rendered by the Holy Assembly of Bishops in accord with the Patriarchal Council.

Article 17.

A Diocese in the church-administration sense, is comprised of Diocesan Districts, church congregations, parishes and monasteries.

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Article 18.

The Diocesan District is comprised of a fixed number of church congregations and parishes under the supervisions of a Bishop's District Deputy.

Article 19.

The decisions concerning the creation, abolition and changes of the Diocesan Districts are rendered by the Diocesan Bishop in accord with the Diocesan Ecclesiastical Court and the Diocesan Executive Board, in regard of which he (the Bishop) informs the Holy Synod of Bishops and the Patriarchal Executive Board.

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Article 108

In addition to his rights and duties according to ecclesiastical and canonical regulations, the Diocesan Bishop has in his competence:

(1) Teaches and educates the clergy and people in the Diocese by words, deeds and by pastoral epistles;

(2) Preserves, defends and maintains the Orthodox Faith amongst the people, repels every activity which is against the Orthodox teaching and which is harmful to the interests of the Serbian [illegible] Church;

(3) Instructs and encourages the clergy and people to establish and organize religious-benevolent, spiritual-education, patriotic and in general all beneficial institutions for the advancement of faith and morals amongst the people;

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(4) Sees to the regular and proper conducting of divine worship and of church order in general;

(5) Endevaors that churches and monasteries be provided with holy corporals, holy Chrism, holy vestments and untensils and liturgical books, and that all other necessities of the church be properly provided for without delay;

(6) Orders as necessary that divine services be held during special church, national and state holidays;

(7) Gives the blessing for the erection, where necessary, of churches, chapels, cemeteries, and endeavors that they be kept in good order;

(8) Sees that churches, monasteries and chapels are built in the style that is adopted in the Serbian Orthodox Church, and that the churches, monasteries, and homes of the faithful are provided with icons in the Orthodox spirit;

(9) Provides for the preservation of church antiquities;

(10) Consecrates churches;

(11) Ordains worthy persons into the priesthood, directs them to duty and gives them a Grammata confirming this;

(12) Recommends to the Holyn Synod of Bishops for decoration clerics who have distinguished themselves by exemplary living and by their church-pastoral and religious-educational work, and bestows himself such decora-

tions upon such persons which are within his authority to give;

(13) Appoints from among worthy clerics of both branches, his deputy in all Diocesan affairs, and relieves him of the same, informing the Holy Synod of Bishops;

(14) Appoints the Diocesan preachers and confessors for the clergy in the Diocese;

(15) Recommends, appoints, and confirms for the offices and positions in the ecclesiastical and church administrative bodies the officials, clerks and servants, in accordance with the regulations of this Constitution;

(16) Appoints capable persons for teachers of religion in the schools in his diocese and exercises supervision over their work;

(17) Upon recommendation of the monastery superior, gives blessing to worthy persons for entering the monastic order;

(18) Gives within his jurisdiction blessings and dispensations in church-marital and other matters in accordance with church-canonical regulations and the decisions of the Holy Assembly of Bishops;

(19) Judges ordained persons for both branches for lesser (disciplinal) offenses, and punishes for these deeds by: warning, rebuke, penance up to fifteen days, and suspension of sacerdotal functions up to one month, and for greater offenses he submits them to the Ecclesiastical Court; he judges the faithful and pronounces punishments

of temporary dismissal from particular rights or honors in the church; all of these decisions are final;

(20) May lessen degree of final puishment pronounced by the Diocesan Ecclesiastical Court up to one half of the adjudged sentence;

(21) In accordance with the regulations of this Constitution, suspends from sacerdotal functions clerics accused before the court for offenses—(Article 219) and appoints their substitute;

(22) Grants to clerics and officials in his sphere vacations;

(23) Appoints substitutes for absent and ill monastery superiors, district deputies, and parish priests;

(24) Exercises supervision over the work of the district deputies and clergy of both branches in the diocese;

(25) Exercises supreme supervision over the work and life within church institutions of his diocese, recommends to the Holy Synod of Bishops the appointment and dismissal of teaching and counseling personnel of these institutions;

(26) Exercises in his diocese canonical visitations in accordance with church canons, sends special representatives of capable and worthy persons and gives them instructions for the examination of parochial and episcopal district offices, monastery administration and church congregations;

(27) Sees that all orders, decisions, and regulations of higher ecclesiastical authorities are duly and accurately announced and carried out;

(28) With the help of the Diocesan Ecclesiastical Court and the Diocesan Executive Board, he sees that all church delegated authorities and organs in the diocese perform their duties conscientiously and properly, and that all things are carried out in accordance with existing regulations;

(29) Submits to the Holy Synod of Bishops a report with his suggestions concerning his archipastoral work, and concerning the general estate of the Diocese.

Article 109

A Diocesan Bishop can have his deputy who represents him within the limits of the given authority.

Article 110

Bishops' deputies can be such clerics of both orders who have met the conditions prescribed for members of Ecclesiastical Courts in this Constitution.

Article 111

The Holy Assembly of Bishops may remove the Diocesan Bishop only by a canonical verdict, or release him upon proof of incapacity, or by establishing a proof of one of the conditions forseen in Article 104, as well as upon the ground of a justified application for pension.

Appendix G

Article 112

A vacant Diocese is governed by an Administrator, who is appointed by the Holy Synod. The election of the new Bishop has to be done within the time limit forseen by canons.

As long as the Bishop's seat is vacant, there cannot be exercised any Diocesan function which would affect Diocesan organization, nor can there be made any important changes in the matters which were initiated during the administration of the former Diocesan Bishop.

Article 113

As soon as there is a vacancy in a Diocese, by any reason whatsoever, the Diocesan Ecclesiastical Court orders a Commission of three persons who are to accept, according to the inventory all the assets of the Diocese. If something is missing the Court will notify the Holy Bishops Synod, which will bring about a decision on restitutions (restoration or damages).

Article 114

All inventoried real and personal property shall be submitted in writing to the administrator or to the newly appointed Bishop.

7. The Diocesan Ecclesiastical Court

Article 115

The Diocesan Ecclesiastical Court is an organ of the Diocesan Bishop for church adjudication and the affairs of the internal church direction.

Appendix G

Article 116

The President of the Diocesan Ecclesiastical Court is the Diocesan Bishop, who, upon his authorization, can be substituted by Bishop's Deputy.

When the Bishop is presiding, the Bishop's Deputy may participate in the deliberation as a member of the Court.

Article 117

The Diocesan Ecclesiastical Court is comprised of:

(a) President;

(b) Two honorary members, who have alternates;

(c) Secretary-recorder;

(d) Necessary number of lower personnel.

All the personnel of the Ecclesiastical Court are appointed or released by the Diocesan Bishop and of such actions he informs the Holy Synod of Bishops.

Article 118

Members of the Diocesan Ecclesiastical Courts, their alternates, and secretaries (recorders) can be appointed from the ranks of clerics who have at least graduated from the regular Seminary School and have at least ten years of court or church-administrative service. Priority goes to those candidates who have higher theological and possibly jurisprudential education.

Article 119

As secretaries of the Diocesan Ecclesiastical Courts may be appointed, those persons who have graduated from a

regular seminary and for clerks, those persons, who have completed four grades of middle school.

Article 120

The duty of Ecclesiastical Prosecutor is performed by a clerk, who is appointed by the Bishop.

Article 121

Members of the Diocesan Ecclesiastical Court, their alternates, and Secretary (recorder) cannot be related, one to the other, nor with the President in degrees of relation as stated in Article 75.

Article 122

The Ecclesiastical Court makes full valid decisions when in a counsel made up of the President, or his Deputy, two members, and secretaries (or recorders) are present.

Article 123

Members of the Court are replaced by alternates (also honorary members) and in case of need also a secretary of the Ecclesiastical Court.

Article 124

A member of the Ecclesiastical Court who is personally interested, or one who has participated in the investigation of the subject being adjudicated, cannot take part in the judging.

Article 125

The Diocesan Ecclesiastical Court decides as to the exemption of members of the Court. In that decision, the

Diocesan Deputy, or secretary, replaces member of the court whose exemption is sought. Should the exemption of more than one member be sought, the exemption is decided by the Supreme Ecclesiastical Court.

Article 126

The President and members of the Diocesan Ecclesiastical Court, cast their vote in the renderings of decisions completely, independently, in accordance with the dictates of their conscience and in accordance with the provisions of the canons and laws.

Article 127

The Diocesan Ecclesiastical Court renders its decisions by majority of votes. The voting begins with the youngest member of the Court.

A member of the Court who does not agree with the verdict reached, has the right to state his reasons in writing in a separate opinion. Separate opinions are not given to the litigants.

Article 128

All decisions of the Diocesan Ecclesiastical Court, rendered at the meeting at which the Diocesan Bishop did not preside, are submitted to him for concurrence. If the Bishop does not concur with the decision of the Diocesan Ecclesiastical Court, he can direct the subject be submitted for a new trial by the Diocesan Ecclesiastical Court; and if the Diocesan Ecclesiastical Court holds to its first decision, the Bishop can submit the subject with an explanation of his opinion to the Supreme Ecclesiastical Court, which on the subject of this disagreement, renders its

mandatory direction in which case, the carrying out of the decision of the Diocesan Ecclesiastical Court is held up until the Supreme Ecclesiastical Court rules.

Article 129

Decisions rendered at a meeting of the Ecclesiastical Court are recorded immediately in the minutes which are signed by all of the members who judged or decided, and by secretary also.

Decisions and verdicts which are announced relative to those cases, are signed only by the President and Secretary.

Article 130

Subject cases are decided in the order as they came into the Court, except those which the President or his Deputy deem as urgent and as more important and which are placed on the agenda.

Article 131

The President sorts out all the cases reported to the court for adjudication. He opens and closes meetings, and conducts the business of discussion and adjudication, seeing to it that all business does belong to the sphere of the Ecclesiastical Court, and are completed and expedited in the prescribed time.

Article 132

In the area of administration of internal church affairs, the Diocesan Ecclesiastical Court works according to the instructions of the Diocesan Bishop.

Appendix G

Article 133

On the subject of offenses of the clergy, the Diocesan Bishop, after completing necessary investigation through His organs, makes a decision if he tends that the subject matter comes within his jurisdiction; otherwise, he hands the subject to the Diocesan Ecclesiastical Court for action.

Article 134

The Diocesan Ecclesiastical Court—

(a) As a judicial organ:

1) Judges transgressions of clergy of both orders;

2) Judges transgressions of the faithful which may call for excommunication from the church for a certain period or permanently;

3) Judges, within its jurisdiction on the validity, annulment and divorce of a church marriage;

4) Decides on disputes between priests, as well as disputes about parish income, and about real estate and other church property which is directed for the support of the clergy;

(b) As an organ of the Diocesan Bishop for the affairs of internal church government;

1) It supervises, at the direction of the Bishop, the parish clergy, parish offices, and Diocesan Districts;

2) Announces and executes decisions of the higher Church authorities;

3) Assists the Diocesan Bishop in all the affairs of the direction and administration of the Diocese, and executes his orders in those affairs which belong to his personal jurisdictions;

4) Takes care, in accordance with this Constitution, of the inventory of the Diocese in cases of transfer, retirement, or the death of the Diocesan Bishop;

5) Renders decision regarding amendments in Church Register Books.

Article 135

The decisions of the Diocesan Ecclesiastical Courts which are not subject to review by higher authorities are final, and they are executed by the subordinate Ecclesiastical Organs.

APPENDIX H

Litigation Involving Serbian Orthodox Church in North America Dealing with the Same Controversy as Serbian Eastern Orthodox Congregation of St. George, Elizabeth, New Jersey versus Serbian Eastern Orthodox Congregation of St. George, Elizabeth, New Jersey.

The following is the status of various cases:

I. Ohio:

a. Akron—

Popadich v. *Shatrich,* C/P. No. 245,972; *State of Ohio ex rel. Pappas* v. *Shatrich, et al.,* C/A No. 5578. Dismissed. No appeal.

b. Akron—

Serbian Orthodox Church Congregation of St. Demetrius of Akron v. *Vladislav Kelemen* (case No. 1427 Oct. Term 1967—Supreme Court of U. S.) remanded to Supreme Court of Ohio.

c. Youngstown—

Dragelevich, et al v. *Rajisch, et al,* C/P No. 175,-596 (Mahoning Cty.) Appealed to Ohio Appellate Court.

d. Lorain—

Ralich, et al. v. *Vukelich, et al.,* C/P No. 68686 Lorain City.) and C/A No. 1710. Decided 6-29-66. No appeal taken.

e. Cleveland:

The following cases are before the Ohio Court of Appeals, 8th App. District.

1. *St. Sava* v. *Milisav Jevic, et al* (2 cases 29103, 30057
2. *St. Sava* v. *Simich, et al* (2 cases) 29104 and 30049
3. *Simich* v. *St. Sava, et al*, 30059
4. *Jovanovich, et al* v. *Simich, et al*, 29280

II. Illinois:

Serbian Eastern Orthodox Diocese for U. S. A. and Canada, et al v. *Ocokolfich, et al.*, Circuit Ct., Case No. 63-1644, consolidated with Case No. 63-2311 (Lake City.) Both heard under one appeal, the Opinion of which is reported at 72 Ill. App. 444 and 219 N. E. 2d 343. The case was remanded for trial.

III. Indiana:

a. *Merich* v. *Kragulac*, Stark County Circuit Court, No. 63-315—pending.

b. *Kragulac* v. *Tumbas*, Lake County Circuit Court, No. C66-677—pending.

c. *Pasalich, et al.* v. *Draskovich, et al.*, Two cases pending in the Indiana Supreme Court (Consolidated No. 169-s-15).

d. *Marich* v. *Kragulac*, cause No. 364-464, Lake Superior Court, Gary, Indiana—Cause pending on remand from Appellate Court of Indiana.

Appendix H

IV. Minnesota:

Dovich et al v. *Andrich, et al,* District Court of Dakota County, Minnesota. Trial Pending.

V. Pennsylvania:

Gvozdich v. *Dudukovich,* C/P Cambria County, Pa. (Johnstown, Pa.) Trial pending.

VI. Canada:

Mirkovich, et al v. *Bozanich, et al.*—Ontario Supreme Court. Finally decided. No appeal taken.

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Counterstatement of the Case

This case presents the question of whether or not a faction of a local parish, a parish which is admittedly a constituent part of a hierarchal church organization, can repudiate the ecclesiastical decisions of the hierarchal organization of which it is a part. The parish is the Serbian Eastern Orthodox Congregation of St. George located in Elizabeth, New Jersey which was a part of the American-Canadian Diocese of the Serbian Orthodox Church. Both parties admit that the St. George parish is a constituent part of the Serbian Orthodox Church, the spiritual head of which is the Serbian Patriarch, headquartered at Belgrade, Yugoslavia. The attorney for the petitioners admitted in his opening statement that the petitioners "still recognize the Patriarchate as being the spiritual and hierarchal authority in the Church."

The present controversy arose from two decisions taken by the Serbian Orthodox authorities in Belgrade in May, 1963. The first decision concerned Bishop Dionisijie who had been the head of the American-Canadian Diocese of the Serbian Orthodox Church. On May 10, 1963 the Holy Synod in Belgrade suspended him from all priestly functions and relieved him as the head of the diocese pending resolution of charges brought against him. The second decision by the Holy Assembly of Bishops realigned the initial American-Canadian Diocese into three dioceses.

Dionisijie later was discharged as Bishop and defrocked and stripped of all ecclesiastical functions. He has refused to recognize this defrockment and has sought to establish an "autonomous" schismatic diocese.

The present case involving the St. George Congregation concerns petitioners attempt to align the St. George congregation with Dionisijie.

Counterstatement Of The Case

The allegiance of the petitioners to Dionisijie is demonstrated in several ways, such as their refusal to admit the validity of the defrockment of Dionisijie (see petitioners answer to respondent's complaint) and their acknowledgement that they recognize him as their bishop evidenced by the opening statement of the attorney for the petitioners before the Trial Court. However, their allegiance to Dionisijie is more apparent from the actions taken by the petitioners in their attempt to control the St. George Congregation.

On June 16th, after the congregation became aware of the decisions taken by the Holy Synod in May of 1963, a resolution engineered by the petitioner Nikitovich was passed stating that the St. George Church refused to be "subject to decisions which are inspired by the communist Government in Yugoslavia which wishes to achieve our partition and to weaken our church."

Dionisijie, despite his suspension, held a Sabor (council) in August, 1963 which petitioners from the St. George Church attended. The Sabor refused to recognize the division of the diocese and the suspension of Dionisijie and refused to recognize the appointment of the three bishops to the realigned American-Canadian Diocese by the Holy Synod. Dionisijie reconvened the Sabor in November, 1963 after Belgrade had refused to recognize the validity of the August, 1963 Sabor and at this time Dionisijie established the so-called "autonomy" of his diocese.

The respondents who wished to stay within the Serbian Orthodox Church met with Bishop Stefan, the head of the Mid-Eastern Diocese, on August 17, 1964. The petitioners, who at that time were in control of the executive committee of the church, excluded the respondents from membership in the church because they deemed the meeting

with Bishop Stefan a rejection of the June 16, 1963 resolution. The Executive Committee met on August 23, 1964 and the minutes indicate the allegiance of the petitioners to Dionisijie. These minutes state in part as follows:

"Said Resolution was sent to the Diocese, to Libertyville, Illinois, and the priest of the St. George Church and two delegates of our Congregation took part in the work of the legal Tenth Serbian National Diocesan Assembly, held in August and November, 1963, in Libertyville, Illinois where useful Decisions were adopted, to the rendering of which our Congregation has participated and which our Congregation is under a duty to respect and follow.

Despite such a clear Resolution, and despite the clear Decisions of the Tenth Serbian National Diocesan Assembly, at which also our congregation took a part through its Delegates, and pursuant to which decisions our Congregation remained within the frame of the Serbian Eastern Orthodox Diocese in the United States of America and Canada, and under the latter jurisdiction the excluded member of our Congregation have acted, already from a certain time, against our legal Diocese to the detriment of our Church. Acting in conjunction with the representatives of the newly organized Diocese for the Middle West, East, and Canada, they rendered themselves guilty toward their church and the Diocese, under the jurisdiction of which their high mark, when in the evening of August 17, 1964 they secretly convened in Elizabeth at Hotel Carteret with Stefan Lastavica, former Archpriest from Windsor, Ontario, and now Bishop of the Middle West, East, and Canada, with Archpriest Dusan Klipa from Clariton, Penn., the 'Arhijerejski Namesnik' for the same Diocese, known to all. At this meeting they conspired with the aforesaid Lastavica and Klipa how to take over the Church of St. George and place it under the Jurisdiction of Lastavica's Diocese.

Such an activity of the aforesaid persons is an activity against our Diocese and Church" (ex. PW 20,946a at P. 2).

Counterstatement Of The Case

In February, 1965 the petitioners in order to solidify their position, amended the by-laws of the St. George Church to provide that no one could be a member of the St. George Church who did not recognize the jurisdiction of Dionisijie's Diocese (Ex. PR 7, 103a-Art. 9e).

Meanwhile the defrocked Dionisijie was seeking support throughout the world for his "automonous" schismatic diocese. He unsucessfully approached both the Patriarch of Constantinople and the Russian Orthodox Church for recognition. When it became apparent that Dionisijie was trying to establish an independent church, the heads of the three dioceses in the United States issued a proclamation on November 24, 1966 (a copy of which was sent to the Committee of Unity representing the St. George Congregation) stating that any person supporting Dionisijie was considered to having seceeded from the Serbian Orthodox Church and therefore lost his "status and all rights and privileges in the Serbian Orthodox Church" (Petitioner Appendix E, P34a). On January 29, 1965, seventeen persons were appointed by Bishop Stefan to whom respondents owe allegiance to conduct the affairs of the St. George parish until "normal church life and activities of their congregation are brought about."

Thereafter suit was started by both sides and the cases were consolidated for trial. The matter was decided in favor of respondents by the Trial Court (see Petitioners Appendix B; and P.3a et seq.). This judgment was upheld by the Appellate Division of the New Jersey Superior Court (See Petitioners' Appendix C, P.28a et seq). The New Jersey Supreme Court thereafter denied Petitioners' petition for certification (See Petitioners Appendix D P.33a).

Argument

Objections To Granting Writ Of Certiorari

Point I

There is no federal question presented.

The Statement of facts indicates that the primary reason for dispute which developed in the St. George Church arose out of the petitioners refusal to accept the decision by higher church authorities removing Donisijie as Bishop of the American-Canadian Diocese. The most noticeable examples of this are the minutes of the meeting of August 23, 1964 wherein the respondents were barred from activity in the church because of their failure to accept the decisions of the two Sabors which sought to set aside the decision suspending Dionisijie and the altering of the by-laws by the petitioners after the removal of the respondents to provide that no person would be a member of the St. George Church who did not recognize the jurisdiction of Dionisijie's diocese. Closely connected with the petitioners refusal to accept the suspension of Dionisijie was petitioners refusal to accept the realignment of the one diocese into three dioceses. The New Jersey Trial Court recognized the actions of the petitioners for what they are—an attempt to override decisions of the hierarchy on religious matters. The Trial Court quoted with approval the following language from the decision in the case of *Serbian Orthodox Church Congregation of St. Demetrius v. Keleman et al.*, (decided by the Court of Common Pleas of Summit County, Ohio, 1966):

> "Plaintiff and those in sympathy with them are rebelling against the patriarchy and are following the former Bishop who is not a

Argument

Bishop and are considering themselves a part of a church which is not a part of the orthodox church system and not a part of the eastern orthodox church. Consequently the evidence in this case identifies the defendants and those in association with them as the successors to the church and who maintain and profess its submission to the Serbian Eastern Orthodox Church."

The Appellate Court also recognized that the "basic conclusions of the trial judge rest . . . upon the recognition of decisions made by the highest authority of the mother church of which the church of St. George was a constituent part from the time of its organization." It must also be recognized that the petitioners do not contest the fact that the St. George Church is a constitutent part of the Serbian Orthodox Church and make no attempt to attack this affiliation.

In this background it is evident that this petition is based primarily upon an incorrect reading of the recent case of *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 21 L. Ed. 2d 658 (1969). The United States Supreme Court decision was announced after the Trial Court's decision but before the Appellate Court's decision. The Appellate Court, therefore, had an opportunity to consider the case of the *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* as well as the leading case of *Watson v. Jones,* 13 Wall 679, 80 U.S. 679, 20 L. Ed. 666 (1872). The New Jersey Appellate Court found that under the *Presbyterian Church of the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* that it "may not on this appeal review the validity of the action of the

Holy Assembly of Bishops acting under the authority of Article 16 of the Constitution of the Mother Church in sub-dividing the old diocese".

The decision of the Trial Court and subsequent affirmance by the New Jersey Appellate Division was in accordance with the principles established in the *Hull Church* decision. In essence, the Trial Court found for the respondents because it did not want to interfere in a controversy over religious doctrine and practice; namely, whether the decisions of the Serbian Orthodox Church concerning the realignment of one of its dioceses and the suspension of its bishop were proper ones.

The case presented three interrelated questions:

1. Whether the Court will review the ecclesiastical decisions concerning the defrockment of Dionisijie and the realignment of the former diocese into three dioceses.

2. Whether the facts support the finding that the petitioners are followers of a defrocked bishop.

3. If the facts support a finding of allegiance by the petitioners to a defrocked bishop, does this allegiance mean exclusion from the St. George Congregation.

The problem is that the petitioners are dealing with the third issue and the *Hull Church* case dealt with the first issue. For the petitioners position to be sustained the Court would have to make a determination on the first issue and find that the realignment and the defrockment of Dionisijie were improper. This, of course, is exactly what the Court said it would not do in the *Hull Church* case because "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice."

Argument

It is the petitioners who are seeking the resolution by the courts of ecclesiastical questions. The petitioners contend that the decisions of the New Jersey courts violate the *Presbyterian Church vs. Hull Church* decision because they are based on a "determination of who is a lawful member of the Church and who is not a lawful member of the Church." This clearly is not the situation. The Trial Court stated in its decision that "nothing found in this opinion should be read by the successful litigants as a justification for excluding anyone from the Congregation of St. George, who if he qualifies from a religious point of view, is willing to accept the new diocese, its bishop and its position as a part of the Serbian Orthodox Patriarchate". The Trial Court found that this is not disputed by the petitioners that the St. George Church is a constituent part of the Serbian Orthodox Patriarchate and there is nothing unusual for a Court to rule that a congregation should only have as its members those persons who follow the Serbian Orthodox Church. All that the respondents think is that the St. George Church consists of members in good standing of hte Serbian Orthodox Church in accordance with the principles under which it was founded. The petitioners have not shown the slightest disposition to abandon their challenge to the Serbian Orthodox Church and there is nothing that prohibits them from membership if, in fact, they do subscribe to the principles of the Serbian Orthodox Church. The *Hull Church* decision clearly is in accordance with these principles.

CONCLUSION

The question presented in this appeal by petitioners is insubstantial and fails to raise nor does their brief demonstrate a question of such public importance as to merit the attention of this Court nor call for the extraordinary granting of a Writ of Certiorari. For the foregoing reasons it is respectfully urged that this Court decline to issue the writ sought by the petitioners.

Respectfully submitted,

JOHNSTONE & O'DWYER, Esqs.

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Of Counsel

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IN THE

Supreme Court of the United States

OCTOBER TERM—1969

No. 1012

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J. a corporation, etc. and CASLOV NIKITOVIC (and thirteen others),

Petitioners,

vs.

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J. (DIOCESE FOR EASTERN STATES OF AMERICA AND CANADA), an unincorporated association, and LOUIS VASITY, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

PETITION FOR REHEARING

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Respondents.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

PETITION FOR REHEARING

Appellant presents its petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

Grounds for Rehearing

The New Jersey Courts have misconstrued the United States Supreme Court decision of *Presbyterian Church in the United States etc.* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U. S. 440, 89 Sup. Ct. 601, 21 L. Ed. 2d 658 (1969).

The New Jersey Courts, following the case of *Watson* v. *Jones*, 80 U. S. (13 Wall) 679, 20 L. Ed. 666 (1872) determined that the Serbian Church has a hierarchical polity, and, therefore, the decisions of the highest ecclesiastical authority must prevail. The First and Fourteenth Amendment to the United States Constitution, however, permit a state to utilize the so-called *Watson* v. *Jones* approach only if the appropriate ecclesiastical authority can be ascertained without the resolution of doctrinal questions, and without extensive inquiry into the religious polity of the church. *Maryland and Virginia Eldership of the Churches of God* v. *Church of God at Sharpsburg,* —— U. S. ——, 90 Sup. Ct. 499, —— L. Ed. —— (1970) (concurring opinion).

In the instant case, neither the opinion of the trial court nor that of the Appellate Division deemed that it was necessary to resolve any doctrinal question, or to make an extensive inquiry into the religious polity of the Serbian Church. However, the test is not whether the court decided the case without such inquiry, but whether the facts of the case necessitated such inquiry.

The gravamen of this controversy is; (1) whether the Patriarchate had the power to abolish the Diocese, and (2) whether the petitioners' failure to concede this power and further refusal to repudiate the Diocesan Bishop constituted ecclesiastical schism. The resolution of these questions necessarily entails the examination of the Serbian Church Constitution (Trial Exhibit P.W. 1, Page 888

(a)), the Constitution of the Diocese (Appendix F, Page 42(a), Trial Exhibit P.W. 2, Page 890(a)), the corporation by-laws (Trial Exhibit P.W. 16, Page 918 (a)), and the Corporate Charter (Trial Exhibit P.R. 10 and P.R. 11, 870 (a)), as well as the Ecclesiastical Canons of the church (Trial Exhibit P.W. 22, Page 950 (a)).

Furthermore, a determination of schism without an adjudication by an ecclesiastical tribunal requires an analysis of doctrine. *Serbian Orthodox Church of St. Demetrius of Akron Ohio* v. *Keleman,* 21 Ohio State 2nd —— (1970) (Opinion printed in Supplemental Appendix). There has been no determination of an ecclesiastical tribunal in this case.

In the matter of *Serbian Orthodox Church of St. Demetrius of Akron Ohio* v. *Keleman, supra,* the Supreme Court of Ohio, in a case on remand from the United States Supreme Court, and dealing with facts which are identical to the facts in the matter *sub judice* stated:

> "In addition, the Court of Appeals found that the members of the plaintiff association have performed schismatic acts amounting to a withdrawal from the general church. The essence of this finding must lie in a judicial determination that plaintiff has acted contra to the doctrine and tenents of the church. In order to make such a finding, the Court of Appeals had to examine plaintiff's activities, as well as church doctrine and tenets." (Supp. Appendix p. 8a)

Therefore, the facts of this case do not permit an application of the *Watson* v. *Jones* approach without a transgression of First Amendment guarantees.

The Supreme Court of Ohio, in the case of *Serbian Orthodox Church of St. Demetrius of Akron Ohio* v. *Kele-*

man, supra, recognized that inquiry into doctrine and polity was necessary for a determination under the facts of that case, which are identical to the facts of the instant case. The Supreme Court of Ohio, in its opinion of March 4, 1970, abandoned the *Watson* v. *Jones* approach, which had underpinned the Ohio lower court decisions. The Supreme Court of Ohio adopted the "neutral principles" approach enunciated in the *Presbyterian Church* v. *Hull Memorial Church* case, *supra,* and *Maryland and Virginia Eldership of Church of God* v. *Church of God, supra.* The same constitutional considerations present in that case are present in the matter at bar.

Thus, what emerges are two contradictory decisions on identical fact patterns, both based on different interpretations of the *Presbyterian Church* v. *Hull Memorial Church, supra.* Furthermore, in the case at bar, the New Jerseys Courts have relied upon the Ohio lower court decisions, and the latter have now been reversed. However, the reversals were not considered by the New Jersey courts because of the timing of the respective decisions.

As a consequence, a profoundly confused situation exists concerning the issue of ecclesiastical schism, the reliance which churches must place on their constitutions and by-laws, and, most importantly of all, the limits of the First Amendment's interdiction on civil juridical power.

These Serbian Church litigations are not isolated cases —many of these suits are pending in the several states; and as churches become more active in the social dynamics of the nation, ecclesiastical controversy will increase. *Presbyterian Church* v. *Hull Memorial Church, supra,* clearly illustrates this. Therefore, it is essential for the courts of our nation to enunciate clearly the First Amendment considerations to be followed in ecclesiastical matters.

The New Jersey Supreme Court has not heard this case in so far as it denied certification. A remand to that Court, in light of the decisions of the United States Supreme Court in *Maryland and Virginia Eldership of Church of God* v. *Church of God, supra,* and the Supreme Court of Ohio in the *Serbian Orthodox Church of St. Demetrius* v. *Keleman, supra,* would result in a harmonizing of the New Jersey and Ohio decisions in light of the First Amendment considerations previously established by the Supreme Court of the United States in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.*

CONCLUSION

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the judgment of the New Jersey courts be reversed, and remanded to the Supreme Court of New Jersey for adjudication in light of the decision of the United States Supreme Court in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church* 393 U. S. 440, 89 Sup. Ct. 601, 21 L. Ed. 2nd 658 (1969), and *Maryland and Virginia Eldership of Churches of God* v. *Church of God,* —— U. S. ——, 90 Sup. Ct. 499, —— L. Ed. 2nd —— (1970).

Respectfully submitted,

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Certificate of Counsel

I, Daniel J. Russell, counsel for the above named appellants, do hereby certify that the foregoing petition for rehearing is presented in good faith, and not for purposes of delay.

DANIEL J. RUSSELL

SUPPLEMENTAL APPENDIX

[1] A hierarchical church is generally one in which authority is exercised by laymen and ministers organized in an ascending succession of judicatories, while a congregational church is one in which each local church is self-governing. Note, *Judicial Intervention in Disputes Over the Use of Church Property*, 75 Harv. L. Rev. 1142, 1143, citing Sperry, Religion in America.

SERBIAN ORTHODOX CHURCH CONGREGATION OF ST. DEMETRIUS OF AKRON, OHIO, APPELLANT, *v.* KELEMEN ET AL., APPELLEES.

[Cite as Serbian Orthodox Church v. Kelemen, 21 Ohio St. 2d . .]

Religious organizations—Independence from secular control or manipulation—Freedom from state interference—Jurisdiction of civil courts limited.

(No. 41380—Decided March 4, 1970.)

On Remand from the United States Supreme Court

Messrs. Roetzel, Hunsicker & Michaels, Mr. Bernard R. Roetzel and *Mr. Bernard J. Roetzel*, for appellant.

Messrs. Gillen, Miller & Morris and *Mr. Frederick H. Gillen*, for appellees.

Per Curiam. This case is before the court upon remand by the Supreme Court of the United States for further consideration in light of that court's decision in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), 393 U. S. 440, 89 S. Ct. 601.

Opinion

Before a controversy arose in 1963, both plaintiff and defendants were a part of the church membership of the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio. The plaintiff is now an unincorporated association in possession and control of the church property and uses the church name. Defendants are out of possession of the church property and claim to be parishioners of the Serbian Orthodox Church of St. Demetrius of Akron, Ohio, describing themselves as St. Demetrius Church Parishioners for the Unity of the Serbian Orthodox Church, Akron, Ohio, and the "Committee for St. Demetrius Church Parishioners for the Unity of the Serbian Orthodox Church, Akron, Ohio."

In the instant case, plaintiff seeks to enjoin defendants from using the name "St. Demetrius," or "St. Demetrius Church," or "St. Demetrius Church Parisioners." Defendants' cross-petition essentially asks the court to hold that plaintiff is unlawfully withholding and usurping defendants' rights to the use of the church property; that plaintiff be enjoined from the prosecution of this action and from representing itself to be the Serbian Orthodox Church Congregation of St. Demetrius of Akron, Ohio; that plaintiff also be restrained from exerting any further control over the church's affairs, management, and control of the property and assets of the church; and that all such control be transferred to a temporary "Caretaker Board."

The Court of Common Pleas ruled for defendants on their cross-petition, and ordered plaintiff to relinquish management and control of the church property and to vacate positions of trust in the church organization.

In essence, the Court of Appeals found, as follows:

Opinion

That in June 1919 the Serbian Orthodox Church of Akron, Ohio, was incorporated, and the congregation was known as the Serbian Orthodox Church School Congregation of St. Demetrius; that the corporation was a part of the American-Canadian Diocese, and thus a part of the Serbian Orthodox Church Mother Church in Yugoslavia; that the Mother Church is hierarchial and episcopal in structure, as distinguished from autonomous and congregational; that the Mother Church has no power unilaterally to change the geographical limits of the American-Canadian Diocese, although bishops may be deposed and changed by the Mother Church without consulting the diocese; and that because of plaintiff's acts of claiming full ecclesiastical autonomy, found plaintiff to be composed of schismatics who have no right to control church property or to participate in the control of church property or services or to worship as a group of St. Demetrius. Plaintiff association was ordered to relinquish control of all church property and corporate holdings.

Our review is for the purpose of examining the above findings and orders in the light of the *Hull Memorial* case, *supra,* which was a dispute between the Presbyterian Church in the United States (General Church) and two local Georgia churches, one of which was the Mary Elizabeth Blue Hull Memorial Presbyterian Church. The Presbyterian Church is hierarchial in organization rather than congregational. The membership of the two local churches, believing that the general church had substantially deviated from church doctrine and practice, withdrew from the general church.

According to Georgia law, when the local church joined the general church, control of the local church property passed to the general church and an implied trust arose

under which such control would continue as long as the general church did not abandon or depart from the tenets of faith and practice it held at the time the local church became affiliated. The Georgia court asked the jury to determine whether the general church had abandoned or departed from the conditions of the implied trust. Mr. Justice Brennan, in his opinion, pointed out the error in submitting that question to the jury, stating (89 S. Ct., at 606):

> "The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, *the departure-from-*

> *doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.*" (Emphasis added.)

The opinion (89 S. Ct., at 606) clearly restricts the determination of the right to possession and control of church property to the utilization of neutral law principles, by the following language:

> "* * * Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. *And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.* But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment or organs of government for essentially religious purposes, *School District of Township of Abington, Pa.* v. *Schempp,* 374 U. S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); the Amendment therefore com-

> mands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence states, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." (Emphasis added.)

Before surveying the Court of Appeals' findings and orders in light of the decision in the *Hull Memorial* case, a further reference to the facts of the instant case is helpful insofar as our case is concerned, plaintiff and defendants were able to worship at the church property until this controversy exacerbated. The root cause of the strife in this church (as well as other Serbian Orthodox Churches in the United States) is that there were some members who were disturbed by the relationship between the Mother Church, headquartered at Belgrade, Yugoslavia, and the government of that country. This undercurrent of unrest was precipitated into a polarized controversy when the ruling body of the Mother Church ordered that there were to be three dioceses in the United States and Canada instead of the existing one. Bishop Dionisije was the Bishop of the American-Canadian Diocese and he and his followers (plaintiff) deny the power of the Mother Church to do away with that single diocese. Defendants, to the contrary, adhere to the Belgrade decision. Dionisije was investigated, charged, tried, and found guilty of transgressions against the church and was ordered defrocked by the Holy Episcopal Council, the highest ecclesiastical, judicial body of the Serbian Orthodox Church.

Briefly stated, our inquiry is: Did the Court of Appeals base its judgment, awarding possession and control

of the property involved, upon consideration of whether the parties had adhered to or departed from church tenets and doctrine, or did it base its judgment upon principles of neutral law?

The answer lies in the appraisal of the findings of that court. The Court of Appeals' factual findings regarding the name, incorporation, the hierarchial form of organization, and plaintiff's claim of autonomy from the Mother Church did not require a decision involving church doctrine or tenets.

That court arrived at legal conclusions relative to the organizational relationship, powers and duties of the Mother Church concerning the appointment of a bishop for the Diocese of the United States and Canada, and the Mother Church's attempt to eliminate the diocese. While we recognize that these matters of internal church organization are chronic sources of disagreement for the parties and are frequently mentioned in the pleadings, briefs and arguments, the findings of the Court of Appeals are unnecessary and immaterial to a *neutral* law inquiry utilizing principles of law developed for use in *all* property disputes. Further, the *Hull Memorial* case offers the strong suggestion that civil courts cannot constitutionally determine matters of church government. In that case, the court's opinion cites with approval *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church in North America,* 344 U. S. 94, 97 L. Ed. 120, where, at page 116, the court said:

> "* * * The opinion [*Watson* v. *Jones,* 80 U. S. 679 20 L. Ed. 666] radiates * * * a spirit of freedom for religious organizations, and independence from secular control or manipulation—in short, power to de-

cide for themselves, free from state interference, matters of *church government* as well as those of faith and doctrine. *Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as part of the free exercise of religion against state interference.*" (Emphasis added.)

In addition, the Court of Appeals found that the members of plaintiff association have performed schismatic acts amounting to a withdrawal from the general church. The essence of this finding must lie in a judicial determination that plaintiff has acted contra to the doctrine and tenets of the church. In order to make such a finding the Court of Appeals had to examine plaintiff's activity as well as church doctrine and tenets. The *Hull Memorial* case, *supra*, held that a jury could not make such an examination, and the viability of the principle of the *Hull Memorial* case commands the same judicial abstinence in the instant case.

After our elimination from consideration of those Court of Appeals' finding regarding church organization on the basis that they are immaterial to a neutral law inquiry, and the elimination of the finding of schism because of the principle of the *Hull Memorial* case, what neutral law principles are available as standards in the evaluation of the merits of this dispute? We look to the ordinary judicia of property rights. The Articles of Incorporation of the Servian [Serbian] Orthodox Church of Akron, Ohio, dated June 21, 1919, show that a corporation not for profit was established under the general corporation laws of Ohio. The Articles reveal that the corporation

was formed "for the purpose of providing a place of worship * * * according to the rules, regulations and customs of the Servian [Serbian] Orthodox Church * * * for receiving, holding and disbersing [sic] gifts, bequests and funds from any source; for owning and maintaining suitable real estate and erecting and maintaining * * * buildings, and * * * a cemetry * * *."

Recorded deeds show that the corporation holds legal title to all church property. A review of Ohio law does not reveal recognition of an implied-trust theory of real property when a local church joins a church hierarchy. Even if it were to have existed, civil judicial cognizance of it is deemed unconstitutional if it necessitates a court deciding church doctrine. There are no deeds or other written evidence of conveyance from the local congregation, either to the diocese or the Mother Church. Moreover, the Constitution and By-Laws of the Serbian Orthodox Church School Congregation of Akron provides, in part "The congregation may independently function only in the matters relative to the material holdings (properties) of the congregation." Therefore, in the absence of a conveyance of the property by legal instruments or the existence of an express trust, the title to the property is vested in the corporation.

We note that in deciding church controversies, civil courts have had occasion to examine decisions made by a church body's tribunal established to decide disputes. See *Watson v. Jones, supra* (80 U. S. 679); Note, *Judicial Intervention in Disputes Over the Use of Church Property,* 75 Harv. L. Rev. 1142, 1162. In the *Watson* case, the court said at page 729:

> "* * * It is of the essence of these religions, unions, and of their right to establish tribunals for

> the decisions of question arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

Commenting on the *Watson* case, Justice Brennan, in the *Hull Memorial* case, (89 S. Ct., 605) said: *"The logic of this language leaves the civil courts no role in determining ecclesiastical questions in the process of resolving property disputes."*

In the case at bar, we are not confronted with the problem of whether we can constitutionally order the enforcement of a determination made by an ecclesiastical tribunal. Other than the order creating the three new dioceses the record fails to indicate an ecclesiastical tribunal's determination concerning the power of the Mother Church to eliminate the American-Canadian Diocese. The record does not illustrate that plaintiff has been ecclesiastically adjudicated to be outside the church doctrine because of the commission of certain acts. Additionally, the determination of the status of Bishop Dionisije, who was ecclesiastically adjudged defrocked, is frequently mentioned but remains unnecessary in our inquiry. Any question concerning court enforcibility of such a church determination is not before us.

All the agonies of a church controversy are discernible from a review of this case, but we are convinced by the rule of the *Hull Memorial* case that the civil court's role as a tribunal to bring order to church controversies is narrowly limited.

The control of the name and property, of the Serbian Orthodox Church Congregation of St. Demetrius of Akron,

Ohio, must be determined only by reference to the provisions of the Code of Regulations and By-Laws of the corporation not for profit, the corporate laws of this state, and any other secular instruments not requiring the resolution of religious tenets or doctrine.

For the foregoing reasons the judgment of the Court of Appeals is reversed and the cause is remanded to that court for further proceedings in accordance with this opinion.

Judgment reversed.

O'NEILL, SCHNEIDER, HERBERT, DUNCAN and CORRIGAN, JJ., concur.

MATTHIAS, J., not participating.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1969

No. 1012

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J. a corporation, etc. and CASLOV NIKITOVIC (and thirteen others),

Petitioners,

vs.

SERBIAN EASTERN ORTHODOX CONGREGATION OF "ST. GEORGE", ELIZABETH, N. J. (DIOCESE FOR EASTERN STATES OF AMERICA AND CANADA), an unincorporated association, and LOUIS VASITY, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of New Jersey

REPLY BRIEF FOR PETITIONERS

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Introduction

This Reply Brief is filed pursuant to Rule 24, subparagraph 4, Rules of the Supreme Court of the United States. The respondents, in their Answering Brief, made certain statements of fact and arguments of law which are disputed by the petitioners. The petitioners contend that the factual and legal assertions hereinafter referred to in this reply brief, will be supported in the record, should this Court grant certiorari.

Reply to Counter-Statement of Facts and Answering Argument

Respondents maintain that the St. George Corporation is a constituent part of a hierarchical church organization (See Answering Brief, pages 1 & 6). They seek to imply that the petitioners admit that the St. George Corporation is merely a subordinate unit of a general hierarchical church organization. The petitioners make no such admission. Petitioners contend that St. George Corporation's affiliation with the Serbian Church system is through its affiliation with the Serbian American-Canadian Diocese. The respondents maintain that this diocese has been abolished. The petitioners maintain that the diocese and its constitution, through which they are affiliated with the Serbian Church, have not been abolished. They point out that this constitution is viable, and in fact controls the relationship between the Serbian Church hierarchy and the American-Canadian Diocese, and through the diocese, the St. George Church Corporation (See petitioners' Appendix F. page 42a).

Respondents argue further that this controversy centers around the alleged removal of the Serbian Bishop

Dionisije by the Serbian Church authorities (See Answering Brief, page 5). Petitioners deny this. Petitioners contend that the dispute centers around the purported abolition of the American-Canadian Diocese and its Constitution. They maintain that this attempted abolition was *ultra vires* in that it transgressed the diocesan Constitution.

Respondents point out that the decision of the New Jersey Trial Court was founded upon the reasoning of an Ohio Court in the case of *Serbian Orthodox Church Congregation of St. Demetrius v. Keleman, et al.*, 21 L. Ed. 750, 89 S. C. (1968) (See page 5 of Answering Brief). But it should be noted that in 1969 this *Keleman* case came before the Supreme Court of the United States, which remanded that case to the Supreme Court of Ohio for determination in accordance with the principle established in *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U. S. 440, 21 L. Ed. 2d 658 (1969).

Respondents argue that a civil court would have to review an ecclesiastical decision to sustain petitioners' contention (See Answering Brief, page 7). This statement is incorrect. A civil court could sustain a petitioner's petition by finding:

a. The St. George Corporation is a New Jersey nonprofit corporation.

b. The St. George Corporation is affiliated with the Serbian Eastern Orthodox Church.

c. The petitioners were the duly elected trustees of said corporation.

d. The petitioners' right to hold office of trustee has never been disputed in any ecclesiastical court or other

competent body insofar as a deviation from their ecclesiastical duties is concerned.

e. Petitioners' right to hold office as trustees has never been disputed in any civil court insofar as a deviation from their civil duties is concerned.

If the Court decided the case on this basis, such a decision would be predicated upon neutral principles of law and without "establishing" a church. *Presbyterian Church in the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra, Mitchell et als.* v. *Albanian Orthodox Diocese in America Inc.,* 244 N. E. 2d 276 (Sup. Jud. Ct. Mass. 1969).

The respondents believe that petitioners urge an incorrect analysis of the case of the *Presbyterian Church of the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* Respondents appear to say that because both that case and the matter *sub judice* concern rulings of hierarchial church organization, both cases are identical. Petitioners contend that this is incidental. What is crucial is that a determination of schism was made in both cases. In *Presbyterian Church of the United States* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church,* a jury determined that the general church had departed from the original tenants of religion, a determination of schism. In the instant case, the court determined that the petitioners had broken with the Serbian Patriarchate and thereby were operating a schismatic congregation (See petitioners' Appendix B, page 27a). Thus, both cases deal with the State's unconstitutional encroachment on the freedom of worship.

Respondents state that the trial court did not irrevocably exclude the petitioners from corporate membership and therefore did not make a determination of church

membership. (See Answering Brief, page 8). This argument is incorrect. The trial court, by requiring conditions for petitioners' membership, obviously meant that they are presently excluded. The mere fact that a court seeks to set conditions for church affiliation is clearly a First Amendment violation. Furthermore, as previously pointed out, the trial court characterized the petitioners as being part of a schismatic congregation. (See petitioners' Appendix, page 27a). The New Jersey Superior Court, Appellate Division, recognized this fact. In its opinion the Appellate Division stated (See Appendix C, p. 31a):

> "The trial judge implicitly determined, and we find the proofs support that conclusion, that appellants here qualify as followers of Biship Dionisije who thus became *schismatics.*" (emphasis supplied)

Therefore, a New Jersey Court has made a determination between two contending factions in a church dispute. This choice was predicated upon the determination of an ecclesiastical question. The court decided that the petitioners were schismatic and therefore have no right to control or be affiliated with the church corporation. The New Jersey Court and the New Jersey Courts alone have decided this question. No legitimate church authority has ever made such a determination.

CONCLUSION

Petitioner reiterates the requests made in its petition for Certiorari. It prays that this court examine the record fully rather than only the assertions of contending counsel as to what the record contains. It prays that this court reaffirm the basic tenant of the Constitution of the United States, to wit, that States may not decide ques-

tions of religious belief and that civil courts may not declare that certain acts do but other acts do not constitute ecclesiastical schism.

Respectfully submitted,

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